

No. 15169

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United States  
Court of Appeals  
for the Ninth Circuit

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,  
vs.

JACK LEWIS AND JOE LEVITAN, a Copart-  
nership Doing Business as CALIFORNIA  
FOOTWEAR COMPANY and TRINA SHOE  
COMPANY, a Corporation,  
Respondents.

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Transcript of Record

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Petition for Enforcement of an Order of the  
National Labor Relations Board

FILED

DEC - 3 1956



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Petition for Enforcement of an Order of the  
National Labor Relations Board





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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## ATTORNEYS OF RECORD

MARCEL MALLET-PREVOST,  
Asst. Attorney General,  
National Labor Relations Board,  
Washington 25, D. C.,  
For the Petitioner.

RICHARD A. PERKINS,  
411 West Fifth St.,  
Los Angeles 13, Calif.,  
For the Respondent.

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United States of America Before the National  
Labor Relations Board, Twenty-First Region

Case No. 21-CA-1659

In the Matter of

JACK LEWIS AND JOE LEVITAN dba CALI-  
FORNIA FOOTWEAR COMPANY,

and

UNITED SHOE WORKERS OF AMERICA,  
LOCAL 122.

Case No. 21-CA-1658

In the Matter of

TRINA SHOE COMPANY,

and

UNITED SHOE WORKERS OF AMERICA,  
LOCAL 122.

AMENDED CONSOLIDATED COMPLAINT

It having been charged by United Shoe Workers of America, Local 122, a labor organization, hereinafter called the Union, that Jack Lewis and Joe Levitan d/b/a California Footwear Company, hereinafter called California Footwear; and Trina Shoe Company, hereinafter called Trina (said Companies being referred to herein collectively as Respondents), have engaged in and are now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Rela-

tions Act, as amended, and Public Law 101, 80th Congress, First Session, hereinafter called the Act; the General Counsel of the National Labor Relations Board, on behalf of the Board, having issued its Order of Consolidation, the Regional Director for the Twenty-First Region, designated by the Board's Rules and Regulations, Series 6, Section 102.15, hereby issues this Amended Consolidated Complaint and alleges as follows:

1. Jack Lewis and Joe Levitan, doing business as a copartnership under the firm name of California Footwear Company, are engaged in the manufacture and wholesale distribution of footwear. During the 12-month period ending December 31, 1952, California Footwear shipped products valued in excess of \$25,000 directly to points outside the State of California.

2. Trina Shoe Company, a California corporation, is engaged in the manufacture and wholesale distribution of footwear. During the 12-month period ending June 30, 1953, Trina shipped products valued in excess of \$25,000 directly to points outside the State of California.

3. Trina is and has been since on or about February 1, 1953, a part of, successor to, and the alter ego of California Footwear for purposes of the Act.

4. Respondents and each of them are and at all times material herein have been engaged in commerce within the meaning of the Act.

5. The Union is a labor organization within the meaning of Section 2 (5) of the Act.

6. The Union was certified by the National Labor Relations Board on August 20, 1951, as a representative of the employees of California Footwear in an appropriate unit as follows:

All production workers, excluding executive, administrative, sales, clerical, maintenance employees, truck driver, guards, professional and supervisory employees as defined in the Act.

7. All production workers employed in the California Footwear plant at 253 South Los Angeles Street, Los Angeles, California, prior to about February 1, 1953, and all production workers employed at its plant at 222 Main Street, Venice, California, since its move from the former address to the latter on or about February 1, 1953, and all production workers employed in the Trina plant at 222 Main Street, Venice, California; with exclusions as set out in paragraph 6 hereof, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

8. At all times since on or about August 20, 1951, the Union has been and now is the duly designated collective bargaining representative of the unit set forth in paragraphs 6 and 7 hereof.

9. From on or about January 1, 1953, to the date hereof, California Footwear, by its officers, agents, and representatives, has failed and refused, and does now fail and refuse, to bargain collectively in

good faith with the Union with respect to wages, hours and conditions of employment of the employees of the unit set forth in paragraph 6 hereof, although frequently requested to do so by the Union, including, but not by way of limitation, specific requests on March 24, 1953, and March 31, 1953.

10. From on or about February 19, 1953, to the date hereof, Trina, by its officers, agents and representatives, has failed and refused, and does now fail and refuse, to bargain collectively in good faith with the Union with respect to wages, hours and conditions of employment of the employees of the unit set forth in paragraph 6 hereof, although frequently requested to do so by the Union, including, but not by way of limitation, specific requests on March 24, 1953, and March 31, 1953.

11. By the acts and conduct set forth in paragraphs 9 and 10 above, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

12. On the respective dates indicated, Respondents, and each of them, discriminatorily discharged the following employees to discourage membership in the Union:

Date	Name
April 2, 1953.....	Anna C. Cherry
April 6, 1953.....	Ruby Lee Walker
April 28, 1953.....	Jack Rosenthal

13. By the acts described in paragraph 12 above, Respondents, and each of them, did engage in and

are engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

14. By the acts described in paragraphs 9 through 13 above, and by each of said acts, by interrogation of employees concerning their union membership and activities, by surveillance of union activities, by delivery of an anti-Union speech on or about March 15, 1953, followed by refusing to permit the Union to reply to same under similar circumstances, and by promises of wage increases and threats of retaliation, Respondents, and each of them, did interfere with, restrain and coerce and are interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in and are engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

15. The activities of Respondents set forth in paragraphs 9 through 13, and occurring in connection with Respondents' operations described in paragraphs 1, 2 and 3 hereof, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twenty-First Region, this 30th day of September, 1953, issues this Amended Consolidated Complaint against Jack Lewis and Joe Levitan, a copartnership doing busi-



ness under the firm name of California Footwear Company, and Trina Shoe Company, Respondents herein.

[Seal]      /s/ HOWARD F. LeBARON,  
Regional Director National Labor Relations Board,  
Twenty-First Region.

[Received in evidence as General Counsel's Exhibit No. 1-R, October 13, 1953.]

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Before the National Labor Relations Board  
[Title of Causes.]

AMENDMENT TO AMENDED  
CONSOLIDATED COMPLAINT

The Regional Director for the Twenty-First Region, designated by the Board's Rules and Regulations, Series 6, Section 102.15, hereby issues this Amendment to Amended Consolidated Complaint:

Paragraph 12 of the Amended Consolidated Complaint herein is amended by the addition of the following:

(1) 12A. On or about February 1, 1953, and again on or about February 9, 1953, Respondents and each of them discriminatorily failed and refused to employ, or in the alternative did discriminatorily discharge one Blanche Roarke to discourage membership in the Union.

(2) Paragraph 13 is amended by adding to line one thereof, following the words "paragraph 12" the additional words "and paragraph 12A."

(3) Paragraph 14 is amended by adding to line one thereof, following the words "through 13" the additional words "and paragraph 12A."

(4) Paragraph 15 is amended by adding to line two thereof, following the words "through 13" the additional words "and paragraph 12A."

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twenty-First Region, this 12th day of October, 1953, issues this Amendment to Amended Consolidated Complaint against Jack Lewis and Joe Levitan, a copartnership doing business under the firm name of California Footwear Company, and Trina Shoe Company, Respondents herein.

[Seal]     /s/ HOWARD F. LeBARON,  
Regional Director National Labor Relations Board,  
Twenty-First Region.

[Received in evidence as General Counsel's Exhibit No. 1-T, October 13, 1953.]

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Before the National Labor Relations Board  
[Title of Causes.]

**ANSWER OF CALIFORNIA  
FOOTWEAR COMPANY**

Jack Lewis and Joseph Levitan doing business as California Footwear Co., answering the consolidated complaint for themselves alone, admit, deny, and allege as follows:

## I.

Admit the allegations of paragraph I of the complaint, except that they deny that they are engaged in the manufacture of footwear.

## II.

Admit that Trina Shoe Company is engaged in the manufacture of footwear, but deny each and every other allegation of paragraph II of the complaint.

## III.

Deny generally and specifically each and every allegation of paragraphs III, IV, VI, VII, VIII, X, XI, XII, XIII, and XIV of the complaint.

## IV.

Admit the allegations of paragraph V of the complaint.

## V.

On information and belief admit the allegations of paragraph IX.

And for a Separate and Affirmative Defense to the Complaint Herein, These Answering Respondents Allege:

## I.

That the General Counsel of the National Labor Relations Board and the charging party are estopped to maintain this proceeding for the following reasons:



(1) This proceeding has the purpose and effect of enforcing a labor contract which contains an illegal Union Security clause;

(2) As the General Counsel through his agents well knows, said charging party in this proceeding is currently prosecuting an action against these respondents in the Superior Court of Los Angeles County, California, seeking, among other things, to enforce against these respondents Section 923 of the Labor Code of the State of California. Said State Court action constitutes an encroachment upon and usurpation of the Federal power as expressed in the Labor Management Relations Act, 1947. Although the General Counsel has been requested to protect these respondents against such unwarranted State Court action (as he has protected Unions similarly situated) he has refused to furnish these respondents any protection. The prosecution of the instant proceeding against these respondents in the circumstances violates these respondents' constitutional rights.

/s/ RICHARD A. PERKINS,  
Attorney for Said Respondents.

State of California,  
County of Los Angeles—ss.

Jack Lewis, being sworn says:

That he is a member of California Footwear Co., a copartnership and authorized to make this verifi-

cation on its behalf; that he has read the foregoing Answer to Complaint and knows the contents thereof and that the same are true of his own knowledge, except as to matters stated on information and belief, and as to those matters he is informed and believes the same to be true.

/s/ JACK LEWIS.

Subscribed and sworn to before me this 29th day of July, 1953.

[Seal]     /s/ ANN FLINKMAN,  
Notary Public in and for the County of Los Angeles, State of California.

My commission expires 4/29/57.

[Received in evidence as General Counsel's Exhibit No. 1-N, October 13, 1953.]

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Before the National Labor Relations Board  
[Title of Causes.]

### ANSWER OF TRINA SHOE COMPANY

Trina Shoe Company, a corporation, answering the consolidated complaint for itself alone, admits, denies, and alleges as follows:

#### I.

On information and belief admits the allegations of paragraph 1 of the complaint, except that it denies that California Footwear Company is engaged in the manufacture of footwear.

II.

Admits that it is engaged in the manufacture of footwear, but denies each and every other allegation of paragraph 2 of the complaint.

III.

Denies generally and specifically each and every allegation of paragraphs 3, 4, 6, 7, 8, 10, 11, 12, 13, and 14 of the complaint.

IV.

Admits the allegations of paragraph 5 of the complaint.

V.

Admits the allegations of paragraph 9 of the complaint and alleges that the Union is not the collective bargaining representative of this respondent's employees.

And for a Separate and Affirmative Defense to the Complaint Herein, This Answering Respondent Alleges:

I.

That the General Counsel of the National Labor Relations Board and the charging party are estopped to maintain this proceeding for the following reasons:

(1) This proceeding has the purpose and effect of enforcing a labor contract which contains an illegal Union Security clause;

(2) As the General Counsel through his agents well knows, said charging party in this proceeding

is currently prosecuting an action against this respondent in the Superior Court of Los Angeles County, California, seeking, among other things, to enforce against this respondent Section 923 of the Labor Code of the State of California. Said State Court action constitutes an encroachment upon and usurpation of the Federal power as expressed in the Labor Management Relations Act, 1947. Although the General Counsel has been requested to protect this respondent against such unwarranted State Court action (as he has protected Unions similarly situated) he has refused to furnish this respondent any protection. The prosecution of the instant proceeding against this respondent in the circumstances violates this respondent's constitutional rights.

/s/ RICHARD A. PERKINS,  
Attorney for Said Respondent.

State of California,  
County of Los Angeles—ss.

Maurice Fellman, being sworn, says:

That he is President of Trina Shoe Company, a corporation, and is authorized to make this verification on its behalf; that he has read the foregoing Answer to Complaint and knows the contents thereof and that the same are true of his own knowledge, except as to matters stated on information and belief, and as to those matters he is informed and believes the same to be true.

/s/ MAURICE FELLMAN.

Subscribed and sworn to before me this 29th day of July, 1953.

[Seal]      /s/ ANN FLINKMAN,  
Notary Public in and for the County of Los Angeles,  
State of California.

My commission expires 4/29/57.

[Received in evidence as General Counsel's Exhibit No. 1-O, October 13, 1953.]

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Form NLRB-501

United States of America, National  
Labor Relations Board

### CHARGE AGAINST EMPLOYER

Case No.: 21-CA-1863.

Date Filed: 11/27/53.

Compliance Status Checked By: D. B.

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.



1. Employer Against Whom Charge Is Brought:

Name of Employer: California Footwear Company and Trina Shoe Company.

Address of Establishment: 222 South Main Street, Venice, California.

Number of Workers Employed: 15.

Nature of Employer's Business: Manufacturing shoes and footwear.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) and (4) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge:

On or about November 21, 1953, the Employers discharged one Eugene Piasek for the reason that he had testified in a National Labor Relations Board hearing on November 13, 1953, and in order to discourage membership in the undersigned labor organization.

3. Full Name of Labor Organization:

United Shoe Workers of America, Local 122, CIO.

4. Address:

617 Venice Boulevard, Los Angeles 15, California.

Telephone No.: RIchmond 7-5329.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit:

United Shoe Workers of America, CIO.

6. Address of National or International, if any:

617 Venice Boulevard, Los Angeles 15, California.

Telephone No.: RIchmond 7-5329.

7. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ ERNEST TUTT,  
Organizer.

Date: November 27, 1953.

Wilfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80).

[Received in evidence as General Counsel's Exhibit No. 22-A, January 5, 1954.]

Before the National Labor Relations Board

[Title of Causes.]

### ORDER

Upon motion of counsel for the General Counsel, dated December 3, 1953, to reopen the hearing in the above-entitled matter for the purpose of adducing evidence concerning the alleged discrimination against Eugene Piasek on November 21, 1953, it is hereby

Ordered that the hearing in the above-entitled matter be and the same hereby is reopened and a further hearing herein shall be conducted at a time and place to be set by the Regional Director upon not less than five days' notice to all parties hereto.

Dated this 8th day of December, 1953.

/s/ JAMES R. HEMINGWAY,  
Trial Examiner.

[Stamped]: Received December 9, 1953.

[Received in evidence as General Counsel's Exhibit No. 22-G, January 5, 1954.]



United States of America Before the National  
Labor Relations Board, Twenty-First Region

Case No. 21-CA-1659

In the Matter of

JACK LEWIS AND JOE LEVITAN dba CALI-  
FORNIA FOOTWEAR COMPANY,

and

UNITED SHOE WORKERS OF AMERICA,  
LOCAL 122.

Case No. 21-CA-1658

In the Matter of

TRINA SHOE COMPANY,

and

UNITED SHOE WORKERS OF AMERICA,  
LOCAL 122.

Case No. 21-CA-1863

In the Matter of

JACK LEWIS AND JOE LEVITAN dba CALI-  
FORNIA FOOTWEAR COMPANY and  
TRINA SHOE COMPANY,

and

UNITED SHOE WORKERS OF AMERICA,  
LOCAL 122.

SUPPLEMENT TO AMENDED  
CONSOLIDATED COMPLAINT

The Regional Director for the Twenty-First Region, designated by the Board's Rules and Regulations, Series 6, Section 102.15, hereby issues this Supplement to Amended Consolidated Complaint:

1. On or about November 21, 1953, Respondents, and each of them, discriminatorily discharged Eugene Piasek to discourage membership in the Union and for the reason that he had given testimony under the Act.

2. On the following workdays Respondents, and each of them, discriminatorily laid off Eugene Piasek to discourage membership in the Union: October 16, 19, 20, 21, 22, 23; November 5, 6, 9, 11, 1953.

3. By the acts set forth in paragraphs 1 and 2 above, Respondents and each of them, did engage in and are engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

4. By the acts set forth in paragraph 1 above, Respondents and each of them, did engage in and are engaging in unfair labor practices within the meaning of Section 8 (a) (4) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twenty-First Region, this 10th day of December, 1953, issues this Sup-

plement to Amended Consolidated Complaint against Respondents herein.

[Seal]: /s/ HOWARD F. LeBARON,  
Regional Director National Labor Relations Board,  
Twenty-First Region.

[Received in evidence as General Counsel's Exhibit No. 22-J, January 5, 1954.]

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Before the National Labor Relations Board  
[Title of Causes.]

### RESPONDENTS' EXCEPTIONS TO INTERMEDIATE REPORT

Respondents California Footwear Company and Trina Shoe Company hereby except to the Intermediate Report herein as follows:

Respondents except:

1. To the order of August 28, 1953, striking portions of respondents' answers (I.R., page 2, lines 18-20).

2. To denial of respondents' motion to quash subpoenas (I.R., page 2, lines 44-45).

3. To the refusal of the trial examiner to grant respondents' motions to dismiss the complaints and portions thereof (I.R., page 3, lines 7-11).

4. To denial of respondents' motion to dismiss the supplemental complaint (I.R., page 3, lines 30-41).

5. To the matter beginning with the word "from" at line 19 and ending with the word "cost" in line 21, page 7, I.R.

6. To the matter beginning with the word "however" in line 39 and ending with the word "that" in line 41, page 8, I.R.

7. To the matter beginning with the word "there," line 50, page 8, and ending with the word "two," line 1, page 9, I.R.

8. To the word "credibly" in line 24, page 9, I.R.

9. To the matter beginning with the word "I" in line 54 and ending with the word "existed" in line 55, page 9, I.R.

10. To the matter beginning with the word "I" in line 2 and ending with the word "occurred" in line 4, page 11, I.R.

11. To the matter beginning with the word "with" in line 12 and ending with the word "supervising" in line 14, page 11, I.R.

12. To the matter beginning with the word "however" in line 23 and ending with the word "inspection" in line 27, page 11, I.R.

13. To the matter beginning with the word "in" in line 7 and ending with the word "machine" in line 11, page 12, I.R.

14. To the matter contained in lines 16 to 20, page 12, I.R.

15. To the matter contained in lines 10 to 28, page 13, I.R.

16. To the matter contained in lines 30 to 50, page 13, I.R.

17. To the matter contained in lines 55 to 61, page 13, and lines 1-13, page 14, I.R.

18. To the matter beginning with the word "rather" in line 9, page 19, and ending with the word "suppositions" in line 24, page 20, I.R.

19. To the matter beginning with the word "one" in line 44 and ending with the figures "536" in line 49, page 19, I.R.

20. To the words "especially with Lewis and Fellman" in line 32, page 20, I.R.

21. To the matter appearing from line 1 to line 20, page 21, I.R.

22. To the matter beginning with the word "after" in line 27 and ending with the word "city" in line 42, page 21, I.R.

23. To the matter beginning with the word "it" in line 55 and ending with the word "version" in line 60, page 21, I.R.

24. To the matter contained in footnote No. 28, pages 21 and 22, I.R., except the first sentence thereof.

25. To the matter beginning with the word "it" in line 47, page 22, and ending with line 24 on page 23, I.R.

26. To the matter beginning with the word "I" in line 41 and ending with the word "union" in line 53, page 24, I.R.

27. To the matter in footnote No. 31 on page 24, I.R.

28. To the matter beginning with the words "the only" in line 3 and ending with the word "Act" in line 8, page 25, I.R.

29. To the matter beginning with the name "Roark" in line 45 and ending with the word "plant" in line 54, page 25, I.R.

30. To the matter beginning with the word "apparently" in line 7 and ending with the word "but" in line 6, page 26, I.R.

31. To the matter beginning with the name "Fellman" in line 9, and ending with the word "have" in line 10, page 26, I.R.

32. To the matter beginning with line 50, page 26, and ending with line 20, page 28, I.R.

33. To the matter beginning with the word "but" in line 15 and ending with the word "it" in line 20, page 31, I.R.

34. To the matter beginning with the word "after" in line 33 and ending with the word "period" in line 35, page 32, I.R.

35. To the words "Piasek did overtime work after Rosenthal left" in line 61, on page 32 and line 1, on page 33, I.R.

36. To the words "Lewis asked Piasek about his membership in the Union" in lines 33 and 34, on page 33, I.R.

37. To the matter beginning with the word "but" in line 4 and ending with the name "Piasek" in line 5, page 34, I.R.



38. To the matter beginning with the word "of" in line 47 and ending with the name "Piasek" in line 52, page 34, I.R.

39. To the matter beginning with line 54, on page 34 and ending with the name "Piasek" in line 5, page 35, I.R.

40. To the matter contained in footnote 40, on page 35, I.R.

41. To the matter beginning with the words "the question" in line 23, page 36, and ending with the word "Act" in line 34, on page 38, I.R.

42. To the matter in lines 3 to 8, on page 39, I.R.

43. To conclusions of law Nos. 2, 3, 5, 6, 7, and 8. on pages 40 and 41, I.R.

44. To the matter beginning with the name "Jack Lewis" in line 18, page 41, and ending with the word "aforesaid" in line 35, on page 42, I.R.

### Brief

[Beginning with the heading entitled Brief, pages 4 thru 6\* constitute the brief portion of this document and for that reason are not considered a part of the certified record.]

Respectfully submitted,

RICHARD A. PERKINS,  
Attorney for Respondents.

Received June 3, 1954.

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\*Page Nos. appearing on original document.

United States of America

Before the National Labor Relations Board

JEROME SMITH,

For the General Counsel.

RICHARD A. PERKINS,

For the Respondents.

MILTON S. TYRE and ERNEST TUTT,

For the Union.

Before: James R. Hemingway, Trial Examiner.

INTERMEDIATE REPORT AND  
RECOMMENDED ORDER

Statement of the Case

On April 3, 1953, United Shoe Workers of America, Local 122, herein called the Union, filed with the National Labor Relations Board, herein called the Board, charges against the above-named Respondents (herein called California and Trina, when referred to individually) of violation of Section 8 (a) (1), (3), and (5) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Thereafter the Union filed three amended charges against Trina. On July 9, 1953, the Acting Regional Director for the Twenty-First Region of the Board, on behalf of the General Counsel for the Board, on the basis of the foregoing charges, issued an order consolidating the cases and a consolidated complaint both of which were served on the respec-



tive parties. The complaint alleged that each of the Respondents had, on specified dates, refused to bargain with the Union upon request, had discriminatorily discharged Anna C. Cherry, on April 2, 1953, Ruby Lee Walker on April 6, 1953, and Jack Rosenthal, on April 28, 1953; had interrogated employees concerning their union membership and activities and had engaged in surveillance of the Union.

The Respondents filed separate answers on August 3, 1953, denying the commission of the alleged unfair labor practices and pleading affirmatively that the Board was estopped because this proceeding had the purpose and effect of enforcing a labor contract, that the Union was currently prosecuting an action in a state court to enforce a provision of the California statutes which constituted an encroachment upon and usurpation of Federal power as expressed in the Act, that the General Counsel had been requested to protect the Respondents against such state court action but that he had refused to do so.

On August 27, 1953, the General Counsel moved to strike the affirmative portion of the answers and on August 28, 1953, Trial Examiner Wallace E. Royster, duly designated to rule on the motion, granted it.

On September 30, 1953, the Regional Director, on behalf of the General Counsel, issued an amended consolidated complaint, which did not alter the substance of the unfair labor practices previously al-

leged but, *inter alia*, added allegations of additional violations of Section 8 (a) (1) of the Act, viz., that the Respondents delivered an anti-union speech on about March 15, 1953, followed by a refusal to permit the Union to reply thereto under similar circumstances, and by making promises of wage increases and threats of retaliation.

On October 12, 1953, said Regional Director issued an amendment to the amended consolidated complaint in which it added an allegation that on about February 1, 1953, and again on about February 9, 1953, the Respondents and each of them failed and refused to employ Blanche Roark<sup>1</sup> to discourage membership in the Union.

Pursuant to notice, a hearing was opened at Los Angeles, California, on October 13, 1953, by William E. Spencer, as duly designated Trial Examiner. At the hearing on that date, counsel for the Respondents moved for a reconsideration of the ruling of Trial Examiner Royster striking the affirmative defense in the Respondents' answers. After hearing argument, Trial Examiner Spencer reaffirmed the ruling of Trial Examiner Royster. The Respondents then moved to quash three subpoenas which had been issued. The motion was denied, but the Respondents refused to comply with the subpoenas. To give the General Counsel time to enforce the sub-

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<sup>1</sup>Spelled Roarke in the complaint, but amended on motion granted at the hearing.

poenas, the case was adjourned.<sup>2</sup> At the reconvened hearing, on November 5, 1953, counsel announced compliance with the subpoenas. The hearing was further adjourned to November 10, 1953, at which time the case was reassigned to the undersigned Trial Examiner. The hearing thereafter proceeded on various dates to and including, November 25, 1953.

At the hearing on November 10, 1953, the General Counsel moved to strike from the amended consolidated complaint the name of Ruby Lee Walker as a discriminatee. The motion was granted with prejudice. On the same day the Respondents stated on the record their answers to the amended consolidated complaint and the amendment thereto, specifically denying the alleged unfair labor practices and certain other allegations. At the close of the General Counsel's case-in-chief on November 23, 1953, the Respondents made motions to dismiss the complaint with respect to Roark, Cherry, and Rosenthal, a motion to dismiss as to the refusal to bargain, and a motion to reconsider the ruling, previously mentioned, of Trial Examiner Royster. All were denied. At the close of the hearing on November 25, 1953, the Respondent repeated the same motions. Ruling thereon was reserved. Oral argu-

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<sup>2</sup>The transcript shows an adjournment to October 20, 1953, and no exhibit is in evidence to show a further adjournment, but I take official notice of a telegram in the official files of the Board, dated October 19, 1953, continuing the hearing from October 20 to November 5, 1953.

excess of \$25,000 directly to points outside the State of California. The exact character of California's operations during the major part of 1953 is in dispute, but for the purposes of a finding on jurisdiction, it is undisputed that, during a substantial portion of the year 1953, Trina Shoe Company, a California corporation (during 1953 located in Venice, an area in Los Angeles, California), manufactured footwear which it delivered to California who, in turn, resold the said footwear at wholesale and retail. During the first 10 months of 1953, the value of the footwear manufactured and delivered by Trina to California and thereafter shipped directly in interstate commerce by California to points outside the State of California, exceeded \$50,000. Although the Respondents in their answers deny that they are engaged in commerce within the meaning of the Act, I find that they are so engaged.

## II. The Labor Organization Involved

United Shoe Workers of America, Local 122, is a labor organization admitting to membership employees of the Respondents.

## III. The Unfair Labor Practices

### A. The Refusal to Bargain

#### 1. The Union's Status at California and the Theory of the General Counsel

On August 20, 1951, the Union was certified by the Board as representative of the employees of California in an appropriate unit of production em-

ployees. On September 27, 1952, California executed a collective bargaining agreement with the Union effective for one year from October 1, 1952, to September 30, 1953, but automatically renewing from year to year unless either party gave notice of termination 60 days or more before the terminal date or its anniversary. California operated under this agreement until about the end of February, 1953, at which time it claimed that it had discontinued manufacturing and that it no longer had production employees to whom the agreement was applicable. It is the General Counsel's position that this claim was based on a subterfuge, that California actually continued manufacturing under a factitious arrangement with Trina, and that Trina was either California's alter ego or its successor. He contends, however, that, even if Trina is an independent contractor, Trina improperly refused to bargain upon request after a showing by the Union of its majority.

## 2. The Business and Operations of the Respective Respondents in 1952

For some time before the incidents here involved, California engaged in its manufacturing business at rented premises on Los Angeles Street, in the city of Los Angeles, hereinafter referred to as the Los Angeles plant. Albert Lewis, son of the Respondent Jack Lewis (hereinafter referred to as Lewis, while Albert Lewis will be referred to as Albert) was an employee of California at its Los Angeles plant, and



during his last few months at that location he was a salaried employee and nonmember of the Union. Trina was incorporated in 1948 as a California corporation.<sup>4</sup> All of its stock was held by Maurice Fellman and his wife, who were, respectively, president and secretary-treasurer. Its directors were Fellman, his wife, and his sister. Before the latter part of 1952, Trina was engaged in the manufacture of footwear with its own machinery and equipment at Costa Mesa, California, a small town in Orange County, the county adjoining Los Angeles County to the south. Trina had never been organized by a union. California's partners never owned any stock in Trina nor held any position therein as officers or directors. Lewis had been acquainted with Fellman since about 1946 and had visited Fellman's plant in 1947.

### 3. Employment of Fellman by California and Subsequent Agreements

Because of a shortage of operating capital, Trina suspended operations before October, 1952, and on about October 1, 1952, Lewis hired Fellman at \$80 per week as a patternmaker to make sample shoes. Fellman continued in California's employ until the end of December, 1952. During the first month of his employment by California, Fellman, in spare time, manufactured at his Costa Mesa plant by himself a small order of shoes for California (150 to

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<sup>4</sup>Fellman had operated as a proprietor before the incorporation.

200 pairs) which he delivered to California and which the latter found satisfactory.

California's Los Angeles lease was due to expire in February, 1953. Its lessor, who was asking an increase in rent from \$288 to about \$342 per month, turned down Lewis' offer of \$300. Because of this and because of poor health and advice of his doctor to "take it easy" as much as possible, Lewis, who lived in Santa Monica, decided to locate the plant closer to his home. During the first week in November, California gave its specifications to realtors, and within 2 weeks the Venice location was found. On November 24, 1952, California signed a lease for the Venice plant with one Kate Salisbury as lessor for a term of 5 years beginning January 1, 1953, at a rental of \$275 per month for the first 2 years and \$300 per month for the next 3 years.

In the month of December, 1952, according to Fellman, he suggested to one of the partners of California that Trina manufacture shoes for California, because "there were several things that indicated there was a possibility that they might even go so far as to discontinue manufacturing completely," such as Lewis' health and the running out of California's lease.<sup>5</sup> I infer that his proposal was

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<sup>5</sup>Fellman, called early in the hearing as a witness by the General Counsel, testified that he first broached this subject about 2 weeks before he moved at the end of December. Later, when called as a witness by the Respondents, he testified that he first brought up the subject early in December. Lewis testified that the discussions were going on

to do the manufacturing at the Venice plant. He testified that there was no reason why he could not have manufactured shoes for California at his Costa Mesa plant but that it would not have been agreeable to all parties because California wanted an arrangement whereby it could have closer inspection of the work. Fellman informed Lewis of his financial obligations and told him that, to make it possible for him to do any manufacturing for California, Lewis would have to advance money to discharge his debts. As a result of the discussions, Trina and California executed an agreement to buy and sell footwear and a sublease by California to Trina of the Venice premises.

As evidenced by the first document which was dated January 2, 1953, Trina agreed to sell and California to buy all the footwear required by the buyer in its merchandising operations during the calendar year 1953. The buyer was given the right to inspect both finished articles and work in process on the seller's premises. The price of the footwear, made according to the buyer's specifications and subject to its approval, was to be fixed by written agreement for each style of shoe, slipper, or other footwear before the seller entered on production, with a

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about the time that he was looking for a new location in November. He admitted, however, that he had full intention of leasing space in the Venice area regardless of whether or not he ever made arrangements with Fellman. I find that the discussions took place after California had signed its new lease.



provision for arbitration in the event of a failure to agree on the price. The buyer agreed to furnish technical advice and assistance, for which a reasonable allowance was to be made in fixing prices, and a reasonable allowance was also to be made "in the event that" the buyer furnished to the seller the use of the buyer's machinery and equipment. The agreement further provided for payment, within 30 day, for goods delivered, but with provision that the buyer might set-off the amount of any invoice against any amount owing from the seller to the buyer. The last two clauses of the agreement negated relationship other than of buyer and seller<sup>6</sup> and prohibited assignment of the contract by the seller although permitting assignment by the buyer within certain limitations.

The sublease, dated January 1, 1953, was for the same 5-year term as the Salisbury lease to California with the same rent as provided in that lease. The sublease described the premises covered as the building demised by the Salisbury lease but excepted "the front storeroom, the rear office room, and the front office room." However, the sublessee, Trina, was given joint use of the front office room with California.

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<sup>6</sup>This clause reads: "It is specifically understood and agreed that Seller is acting hereunder as a vendor and that no relationship of principal and agent, master and servant, manufacturer and sub-manufacturer, jobber and contractor, partnership, or joint venture is intended or shall exist between the parties hereto."

Fellman, although objecting to the amount of rent called for in the sublease, signed the document, but from the start Trina was actually charged with only \$200 on account of rent.

#### 4. Financial Dealings Between California and Trina

Lewis advanced various amounts necessary to pay Trina's creditors, including the amount of a note to a bank which was secured by a chattel mortgage of Trina's machinery and equipment. On March 21, 1953, Fellman and Trina signed a promissory note in the amount of \$3,500 payable on demand to California and at the same time executed a chattel mortgage of Trina's machinery and equipment as security for the payment thereof to cover the various amounts advanced by Lewis to pay Trina's pre-existing debts.

Trina moved its machinery and equipment from Costa Mesa to Venice in late December, 1952. Lewis notified the trucking company that moved Trina's equipment and the cost of moving Trina was billed to California, who, in turn, billed it to Trina. After the lease at the Los Angeles plant ran out in February, 1953, California moved its machinery and equipment to the Venice plant. Some of this included machines which California was leasing from other companies under noncancelable leases. Although California continued to pay the lessors therefor, it billed Trina for the rent thus paid. As one or

two leases expired, the machinery was returned to the lessors, but other machines, on which leases had not expired, were kept at the Venice plant. It does not appear that Trina either required the use of California's machinery or requested that it be moved to Venice. In fact, it was admitted that there was some duplication and that a good many machines were idle because of duplication, principally in the leased equipment. The "reasonable allowance" which the Trina-California sales agreement called for in the event that California furnished Trina the use of California's equipment was never fixed as a separate figure. Nor was any attempt made to fix the value of technical advice and assistance which California agreed to furnish. Lewis testified that these items were taken into account in the price of the footwear which California bought from Trina. Fellman testified that when he entered into the arrangement with California he expected little or no profit. The evidence indicates that Lewis would ask Fellman what it would cost to make a particular shoe and that Fellman would give an estimate based on cost. Fellman testified that he did not figure cost and then add a percentage for profit because "it would be a smaller item than anticipated profit," that "if you brought it down to percentage it might be two, one, or perhaps even less in percentage." The fixing of prices apparently was not done by written agreement as agreed in the sales contract. From all the evidence I infer that neither party to the agreement expected Trina to

receive a credit for more than the shoes manufactured actually cost.

With the exception of the amount involved in the Chattel mortgage note, financial transactions between Trina and California were handled on a book-keeping basis. California kept an account for money expended on behalf of Trina, one for money advanced to Trina for payroll and operating expenses, and one showing credit for finished footwear. California, itself, paid for all purchases of leather and supplies, rental of machinery, etc., billing Trina therefor. From January 10, 1953, to September 30, 1953, California had advanced to Trina's account at weekly intervals for payroll and operating expenses, the total sum of \$43,750. At the hearing on November 23, 1953, Lewis gave it as his opinion that if the contract between California and Trina were terminated at that time their accounts would just about even up. At the reopened hearing in January, 1954, Lewis testified that the arrangement with Trina was severed as of January 1 and that Trina still owed California money for merchandise billed.

Since January 3, 1953, Trina made a few miscellaneous sales of leather and bindings to persons other than to California. There is no evidence as to whether these items had been owned by Trina before the execution of the sales agreement with California or whether it represented something acquired afterwards. With this exception, Trina made no sales to anyone except California and received no funds from anyone except from California.

## 5. Description of the Plant

The building housing the Venice plant has a frontage of about 80 feet. On one side of the facade is a vehicular entrance. In the center is a double door leading into a display room used by California which covers about half of the frontage. On the other side of the facade is a single door leading into a smaller room occupied as joint offices by California and Trina. Behind the display room, but reached through the joint office, is California's office. In back of the joint office passage is the shop, the front part of which is used by California for its stock. Behind that is the factory.

Above the windows of the display room and joint office is a large painted sign bearing the name, "California Footwear Co." This sign appeared as early as March, 1953. On the single street door to the joint office appear the following on four separate lines, reading from top to bottom: "Lewis of California, Trina Shoe Co., Office, California Footwear Co."

Trina had no telephone listing but California had a telephone listing at the Venice address. In the yellow book (classified advertising telephone directory) California had a listing at the Venice address with the words: "Calif. Footwear Co., mfrs. of slippers, sandals and casuals."<sup>7</sup>

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<sup>7</sup>The Respondent offered evidence that it is a common practice in the trade for wholesalers to describe themselves as manufacturers. In view of this, I have given the evidence of the yellow book listing no independent weight but have considered it only as part of the entire picture.



## 6. Employment, Rates of Pay, Payroll and Personnel Practices

In operations at Venice, Fellman, as president of Trina, drew \$80 per week, the same amount he had received as a patternmaker at California. Among the first employees hired by Trina at Venice was Albert Lewis, son of Respondent Jack Lewis. At first, Albert received less than Fellman, but before the hearing on November 10, Albert had received an increase in salary to an amount in excess of that received by Fellman.<sup>8</sup> Fellman described Albert's position as "principally in the supervisory capacity," but with no title, and "principally in the cutting room, but not solely." One or two cutters were employed at the Venice plant. In response to the question whether or not Albert directed the work of the cutters and others in the cutting room, Fellman replied, "At times." Other evidence indicates that Albert usually laid out the material to be cut by the cutters, but there is no evidence that he actually gave directions. Asked whether Albert had other supervisory duties, Fellman replied that he had and that they would be any duties that "I might see fit to assign to him." There is some evidence that Albert occasionally interviewed applicants for employment.

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<sup>8</sup>Eugene Piasek testified without contradiction that when Albert got a raise from \$75 to \$90, Fellman complained about it in a conversation with him (Piasek) saying that he was supposed to be president of Trina and was getting \$80 on which he had to support a wife and two children, and because Albert got married he got a raise to \$90.

The evidence is in conflict as to the part played by Lewis, Levitan, and Fellman in hiring, laying off, or discharging production employees for Trina. Testimony of those three tend to create a picture that Fellman always made the decisions with regard to hiring, laying off, and discharging, with Lewis and Levitan merely lending him an occasional helping hand in interviewing applicants for employment and performing ministerial acts on Fellman's instructions. However, the evidence as a whole convinces me and I find that both Lewis and Levitan exercised more authority than that. Fellman, early in the hearing, testified that he did all the hiring initially and that he did not believe he had consulted either Lewis or Levitan about hiring either generally or with reference to individuals. Later in the hearing, although remembering no specific conversation with Lewis, Fellman testified that he had told Lewis, presumably before Trina moved to the new plant, that there were certain employees at California, who, if available, he would like to have at Venice, and he named four employees whom he thought to be skilled workers. He did not remember Lewis' answer, but he later employed two of those whom he had named. There is cause to believe that Lewis may have vetoed Fellman's selection of the other two. Lewis testified that he had never hired any production employees at Trina "directly" and that Fellman made the decision to hire, but he testified that he did interview quite a few applicants and then would send them to Fellman "to get all



the information or instructions or whatever he has to offer." The evidence indicates that, in setting up at Venice, Fellman did, at times, interview and put employees on the payroll. But Lewis told Jack Rosenthal, when the latter was discussing the prospect of employment in December, 1952, that initially all the employees hired by Trina would be sent there by him and that Rosenthal would be the first clicker operator hired. Rosenthal was hired by Trina.

After California moved to Venice, Lewis and Levitan were active in hiring some employees for Trina. Fellman testified that Levitan might have hired production workers when Fellman had made it known that he was looking for someone to hire and that he did not remember if Levitan had hired anyone before consulting him. Lewis testified that he had had a conversation with Fellman "being that I was more acquainted with the type of work and the type of manufacturing that was going on in this place here, I would more or less be able to judge from the conversation of the interview, or from the experience of the applicant, whether they would fit in with the type of operation or not, and whatever information I obtained I turned it over to Mr. Fellman."

Anna Cherry testified credibly that she went into the office about March 1, 1953, and asked Lewis, who was sitting there, about a job; that Lewis told her to wait; that he went into the plant and sent Levitan out; that Levitan told her he could use her and

that she should return at noon. She returned at that time and was put to work.

Charlotte Parker and Ethaline Smith, responding to a help-wanted advertisement, went to the plant and spoke to an office girl who called Levitan out. Levitan told Parker to come to work in the morning, and when she returned he put her to work. About May 18, 1953, Levitan telephoned Smith, who went to the plant, and Levitan put her to work. Smith testified that Levitan laid her off about 2 weeks later and that toward the last of October he called her back and she worked for 3 days.<sup>9</sup> Parker

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<sup>9</sup>Asked if he had recalled Ethaline Smith to work 3 weeks earlier, Levitan testified: "I never did. The true facts of this case was as follows, she came in with another girl and I had work for—to the other girl, I said, I haven't got work. Because she worked for us much longer, she worked for Trina longer, so Mr. Fellman told me, he says, when you need somebody you put on this one." On cross-examination Fellman denied that he told Levitan in the last 3 weeks that he could hire anybody, but he testified that Levitan might have done so on instructions from Albert. Asked if he had laid Smith off, Levitan testified: "So far as the laying off, if Mr. Fellman would tell me, I would lay somebody off. If he would not tell me I wouldn't. In other words, I was just acting on behalf of Mr. Fellman, not on my authority." I do not credit the testimony that any such formality existed. In fact at about the time of Smith's last layoff, Fellman was beginning to pull out of the Venice plant. He had set up another plant for someone in Culver City, moved some of his machinery there, and had put in an average of 30 hours a week there.

testified that Levitan laid her off in about June, 1953, and later called her back to work.

Lois Murray testified that in April, 1953, she went to the plant and talked to Levitan and Albert; that Levitan told her he did not need her right then but that he would call her in 3 days. When he did not call her, she returned anyway and Lewis hired her. Lewis laid her off in August, and, about 2 weeks before testifying, she called Lewis and asked if she could have her job. Lewis told her he had plenty of work and to come back. She returned but was laid off the same day.<sup>10</sup>

The provisions of California's collective bargaining agreement with the Union were not given effect at Trina in Venice. Trina's Costa Mesa personnel practices were continued at the Venice plant. In general Trina's policies were less beneficial to employees than the provisions of the union contract.<sup>11</sup>

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<sup>10</sup>The foregoing instances are representative of the part played by Lewis and Levitan in hiring and termination of employees. Additional evidence could be recited but it is not deemed essential to do so at this point.

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<sup>11</sup>The record contains a comparison between the provisions of California's union agreement and Trina's practices with respect to minimum hiring rates and other pay practices, including reporting-in pay, overtime pay, pro rata vacation pay, and holiday pay. Mention will be made hereinafter of the health and welfare plan instituted by Trina at Venice.

Trina at Venice paid its employees by check signed by Fellman. It was Lewis' practice, however, to pick up piecework tickets and compute the amount due. Eugene Piasek, a cutter on piece rate, testified without contradiction that he sometimes found errors in the amount of his check and that he would go to Lewis to have them corrected. On one occasion Piasek went to see Lewis about an error and, as Lewis was not there, he told Fellman that his check was short. Fellman replied that he could do nothing about it, that Piasek would have to wait for Lewis. Piasek took the check to Lewis the following week and Lewis checked and found an error. Piasek received the amount due him in his next paycheck.

On Saturday, October 31, 1953, Piasek went to the plant to get his paycheck for the preceding week. When Fellman did not come in by noon, Lewis told Piasek he would give him a check, and he made out and delivered to Piasek a California paycheck signed by Lewis and Levitan in the amount of \$60, payable to cash. The following week, Lewis brought the Trina paycheck to Piasek, who endorsed it and returned it to Lewis, receiving in cash the small difference between the \$60 and the amount of his Trina paycheck.

Piasek testified that for one week in 1953 the entire Venice plant was on a piecework basis;<sup>12</sup> that following that period Fellman spoke to him

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<sup>12</sup>Certain operations were on a piecework basis throughout the period covered by the complaint.

at his machine and told him that he (Fellman) had suggested to Lewis that the shoes could be made cheaper if everyone were on piecework and that Lewis said, "O.K., we will make a try," but that at the end of the week Lewis had called Fellman into the office and expressed criticism of the piecework compensation and it was abandoned. Fellman, when asked on direct examination for the Respondents if he ever said anything of that nature to Piasek, seemed confused but finally denied it.<sup>13</sup>

It was not denied that there was a time when piece rates applied to all production employees. I am not satisfied that Fellman was clear as to what he was denying, and I find that a conversation such as Piasek testified to actually occurred. However, inasmuch as the testimony was hearsay as to what Lewis said, I am not finding that Lewis actually made the statements attributed to him. The evidence is related here rather to show a form of admission by Fellman that he was not completely

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<sup>13</sup>"Q. (By Respondents' Counsel): Now, Piasek still talking, testified that you told him once that you had recommended to Jack Lewis that a piece-rate system be adopted and that Jack Lewis said O.K. Did you ever say anything of that nature either in those words or in substance or effect to Piasek?

"A. Things are very vague. It again couldn't have happened unless it's piecework, we are referring now to the cutting room?

"Q. I am saying what the star witness, Piasek, said. That is all I know. Look, all I am asking is did it happen?

"A. No."



autonomous. Fellman at one point testified that he did not consult Lewis about individual increases but that he might consult with Lewis or other parties for the purpose of determining a rate.

With respect to supervision of the employees' work, the evidence tends to establish that Lewis and Levitan in addition to Fellman, did the supervising. Except for one instance when Albert Lewis spoke to Piasek about whether or not he had performed work assigned and about a mistake which someone had made in marking sizes, the evidence shows little or no supervision by Albert. The Respondents argue that, because California was buying the finished shoes, Lewis and Levitan were merely exercising their privilege of inspecting the work in all stages in process so that there would be fewer rejects. If Fellman had continued his Costa Mesa operations and if Levitan and Lewis had confined themselves to watching and to reporting to Fellman anything wrong which they noticed, there might be more to the Respondents' argument. However, the preponderance of the evidence indicates not only that Fellman was required to move his factory to premises leased by California so that Lewis and Levitan would have closer inspection but it also indicates that Lewis and Levitan in fact exercised managerial authority beyond a mere inspection.<sup>14</sup> A number of employees testified that they had received instruc-

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<sup>14</sup>To the extent that the testimony of Lewis, Levitan, and Fellman conflicts with the findings herein, I do not credit it.

tion from both Levitan and Lewis. In some instances they testified that Fellman also occasionally gave them instructions; others testified that Fellman never gave them instructions.

The Respondents were careful to point out that Fellman did not object to the admitted fact that Lewis and Levitan had instructed employees, showing them how to perform their work. Fellman testified, without giving any specific example, that he objected "where there might have been a showing that I would find contrary to my wishes \* \* \*" and that then the operation was performed as he wanted it done. Other evidence leads me to believe that this was likely to occur only where Fellman's experience in a particular operation was concededly greater than that of Lewis or Levitan. Levitan testified that he would not show an employee how to perform an operation on a machine, "\* \* \* I would in most of the cases, I would send over Mr. Fellman because I am not an operator and he is." But if he saw a worker holding scissors upside down he would "show them instead of going to tell Mr. Fellman to go see what this girl is doing or what that girl is doing." Levitan admitted that he gave orders to an employee named Cherry. He explained: "We were packing, the Trina Shoe Company was packing for us a shoe that Mr. Fellman never knew a thing about and still doesn't know about it which he openly admits. It was straps. The shoes that he manufactured were a vamp shoe



\* \* \* This shoe is made up of straps and he had never had any experience in it and so he would tell me to go over and show her how to operate the machine and so I did." In view of Levitan's testimony that he would not show an employee how to perform an operation on a machine because he was not an operator, but would send Fellman to do so because he was an operator, I do not credit his testimony that Fellman would ask him to show Cherry how to operate the machine. Cherry testified that Levitan usually came around and told her what to do but "sometimes Joe Levitan say, 'I know what I want you to do, but I don't know how it is done.' So he get Mr. Fellman and bring Mr. Fellman and Mr. Fellman show me how he want it done."

Another instance of the exercise of managerial authority by Levitan is evidenced by the fact that he told Piasek and Rosenthal, cutters on a piece-work basis, who occasionally worked on Saturday, which was not a regular work day, that they were not to punch their timecards when they worked on Saturdays or overtime.

In October, 1953, Fellman gave notice to Lewis that he did not wish to renew the Trina-California contract when it expired at the end of the year and requested that he be released from the remaining 4 years of the term of the sublease. Lewis agreed to the request. Lewis testified that there had been a discussion also about taking Albert into the Cali-

fornia partnership if Fellman did not renew the contract. In his testimony on November 23, 1953, Lewis said that a decision had been reached for California to "go on to do manufacturing on our own until we find somebody that will be able to take it over, take it off our hands." At the reopened hearing, Lewis testified that the arrangement with Trina had come to an end as of January 1, 1954, but the plant was not then operating. California expected to continue, however, either on its own or through an arrangement similar to the one it had had with Fellman.

Shortly after Fellman notified Lewis of his intent not to renew (around November 1, 1953), he moved two of Trina's clicker machines and certain miscellaneous equipment from the Venice plant to a location in Culver City and from that time Fellman averaged about 30 hours a week at the latter location. At about the same time he ceased to draw his \$80-a-week salary from Trina. He testified that he still spent some of his time at the Venice plant. Aside from signing checks, he performed no apparent managerial functions after November 1, 1953. Fellman testified that in most instances he had signed the payroll checks after they had been made out but that he had left signed a blank check or two to cover an emergency when he was not available. He further testified that he had not interviewed anyone for employment following that time but had "checked over everything" that had happened. The evidence, including his own testi-

mony, indicates that he was not, however, familiar with all that had happened. For example, when Fellman was first called as a witness on the General Counsel's case, he testified that some new employees were hired while he was away and he did not know who did the hiring but that he had given authority to Albert and Levitan to hire. He testified that Albert was in charge during the time he was away but that "in a general sense" Levitan was in charge in that Levitan had assured him he would keep things going. Later when Fellman was being cross-examined as a witness for the respondents, he testified that he had given Albert express authority in advance to hire certain help that was needed and that he had not given Levitan authority to hire, "but it is possible he might have done it through instructions from Albert." Levitan testified that in that period he had put on employees for short terms at Fellman's instructions. Albert Lewis testified that, in the sense of making the decision to employ someone, neither he nor Levitan nor Lewis did any hiring. He testified that in that period he had interviewed a few girls that came in for jobs; that he had written down all the information and passed it along to Fellman, and that they were not hired until Fellman had specifically approved their names. Albert did not give any names.

Martin Zell, who had been a foreman at another shoe plant, was hired by Trina about mid-October, 1953. Fellman testified that he hired him after consultation with Lewis and then terminated Zell's

employ in about a month. He also testified that he had hired Zell with the intention of using him in the lasting room but that he did no work other than cutting, that Zell did not receive a salary while cutting but was on an hourly rate, and that Zell had only one period of employment. Fellman apparently did not know when he testified on November 24, 1953, that Zell had served as a cutter for his first 2 weeks and then had been given an \$85 per week salary, but during the reopened hearing in January, 1954, Fellman appears to have learned more about Zell's compensation, testifying that Zell was paid piece rate while cutting and that Zell's pay had been established at \$85 per week about his third pay check. At the hearing in November, Fellman furthermore apparently did not know that Zell had been recalled to work and had worked for the 4 days before Fellman gave the foregoing testimony. Likewise, Fellman could not explain the \$60 advance to Piasek. About the first week in November, Levitan told Zell in Piasek's presence, according to the latter, that Fellman "isn't here any more."

The evidence as a whole leads to the conclusion that the arrangement between California and Trina was not an ordinary bona fide sales contract. Rather, I conclude, that the legal documents were designed to give an outward appearance of a type of relationship which did not exist in fact. In reality, the effect of the arrangement was that Fellman lent his corporate structure to California for the sake of appearance but occupied, himself, a position akin

to that of foreman for California. His functions in supervision, hiring, laying off and discharging were no more than might have been performed as a foreman. His signing of payroll checks was a necessary formality to continue the appearance of a separate business. But Trina operated without profit and with no funds of its own. By advancing funds for Trina's weekly payroll, California was in a position to dictate how much should be paid for each employee, including Fellman and Albert Lewis. It is inconceivable that a president and stockholder of an independent corporation, expecting no profit, would set a salary for Albert Lewis, for the type of services which he performed, larger than he set for himself. Not only am I convinced that Fellman, in reality, was no more than a foreman for California but I am convinced and find that even that relationship ended no later than November 1, 1953, when Fellman ceased to draw his salary as president and spent most of his time elsewhere.

## 7. Conclusions Respecting the Employer Status of California and Trina

The preponderance of the credible evidence convincingly establishes that Trina lacked that degree of independence essential to denominate it as an independent contractor. California's being the sole source of Trina's operating capital, its control over payroll funds, its active participation in hiring and termination of employees, its active participation in supervision of manufacturing operations, its selection and leasing of the manufacturing site, and the



use of its machinery and equipment among other things, combine to identify California as the dominant party in the relationship.<sup>15</sup> Even if the Respondents' explanation of the conduct of Lewis and Levitan in directing, supervising, hiring and terminating employees were accepted and they were merely acting as agents for Trina at Fellman's request, they would come within the statutory definition of "employer," which includes "any person acting as an agent of an employer, directly or indirectly." However, looking through form to the underlying substance of the relationship, I am convinced and find that, despite the language of legal documents and the superficial formalities followed by the Respondents, California was, during 1953, in reality the principal and Trina was its alter ego or agent. As such, they were jointly and severally responsible for the unfair labor practices, hereinafter found, during the term of this relationship.

#### 8. Circumstances of Refusal to Bargain

As previously stated, the Union had a collective bargaining agreement with California commencing on October 1, 1952. This agreement could be terminated by either party on proper notice on September 30 of succeeding years.

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<sup>15</sup>Denton's, Inc., 83 NLRB 35; Manhattan Shirt Company, 84 NLRB 100; Walter Holm & Co., 87 NLRB 1169; The Whiting Lumber Company, 97 NLRB 165; National Garment Company, 69 NLRB 1208, enf'd 166 F. 2d 233 (C.A. 8), rehearing den. 166 F. 2d 239, cert. den. 334 U.S. 845.

Early in the year 1953, Ernest Tutt, organizer for the Union, heard rumors that California was going to shut down and that another shop was going to open in Venice. As a result, he went to California's Los Angeles plant and asked Lewis if there was any truth in these rumors. Lewis said that the shop was going to close down and he was going out of business. Tutt asked why, and Lewis explained that he was doing this on advice of his doctor to take it as easy as possible because he had an incurable spinal disease. Tutt asked if Lewis' decision had anything to do with the Union or the contract or anything connected with the Union. Lewis replied that it did not, that it was based on doctor's orders, that he could no longer stand the strain and aggravation of running a shoe factory. Tutt then asked about the Venice factory. Lewis told Tutt that it was one that was going to be operated by Fellman. At Tutt's request, Lewis gave him the address of the new plant. Tutt told Lewis that he was anxious to have as many California employees as possible employed at the Venice plant. Lewis responded that he had nothing to do with hiring or running the Venice plant and that Tutt would have to speak with Fellman about that. Tutt asked Lewis if he had any idea of what Fellman's reaction would be toward continuing the union contract.<sup>16</sup> Lewis

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<sup>16</sup>The contract contained a provision that it was to be binding on successors and assigns, but that when the successor or assign had agreed to be bound by the contract, California's liability thereunder would cease.



replied that he did not and that Tutt would have to talk to Fellman about that.

The agreement between California and the Union included provisions for a union shop and checkoff of dues. California continued to check off dues of employees at its Los Angeles plant until it moved to Venice. The last dues remittance by California was for February, 1953, dues for ten employees.<sup>17</sup>

On January 27, 1953, Tutt, accompanied by the Union's business agent, went to the Venice plant. At that time the plant was just being set up and there were not more than five employees working. Tutt presented to Fellman a copy of the agreement which the Union had with California and told him that the Union was anxious to continue the agreement. Fellman suggested that they return later to discuss the matter. On February 9, they returned and asked Fellman if he had been able to look at the contract. Fellman said he had and he asked a few questions about the agreement and commented that things at the shop were in a raw state and that they were not producing many shoes. Tutt pressed Fellman for a reply as to whether or not he would be willing to continue or reinstate the California-Union contract. Fellman promised to telephone the

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<sup>17</sup>The letter of remittance was dated February 11, 1953, but was on California's letterhead bearing the Venice address. The record does not fix the exact day when California ceased operations at its Los Angeles location. California had checked off dues for seventeen employees in January.

Union by February 13 and give his answer. He did not do so, however.

On February 19, 1953, the Union's attorney wrote a joint letter to California and Trina, stating that it was the Union's position that Trina was actually California and that the California-Union contract continued to be binding on Trina; that if the Respondents took the position that they were not the same, the contract was, by its terms, binding upon California's successor, and that until the successor agreed to be bound, California remained liable under the contract. The final paragraph of the letter read:

This letter shall also serve as formal notice upon you that regardless of what position is taken by the Company as to the existence of a union contract, all the employees engaged at the old job at 253 South Los Angeles, Los Angeles, California, request employment on jobs which they are capable of performing at the first time that the job becomes available. You may reach the employees involved either by notifying the Union or notifying the employee direct.

A reply to this letter was sent to the Union's attorney by Richard Perkins, as attorney for California, on March 19. In the reply, he described Trina as an independent enterprise and said that it was not a successor. He stated that he was informed that when Trina Shoe Company commenced operations it offered employment to those who had

worked at California although it was not obligated to do so.<sup>18</sup>

In the meantime, on March 18, Tutt and Knapp went to the Venice plant with a prepared letter, addressed to the Union, reading:

Our company agrees to recognize your Union as exclusive collective bargaining agent for all of our production employees, effective immediately, providing you show us sufficient pledge and dues cards that you represent a majority of our production employees.

Tutt presented this to Fellman and asked that he sign it. Fellman read it and asked if it was legal for him to sign it. Tutt assured him that it was; so Fellman signed it as president of Trina. Tutt said that the Union would be in a position to negotiate a contract with him as soon as they could prove that it represented a majority of the production employees.

On March 23, Tutt returned to the plant with Frank Roth, a member of the Union's executive board. Tutt asked Fellman for a list of production employees to see if the Union had a majority. Fellman showed Tutt the time cards and Tutt copied the names of the employees from them.

On about March 23, at 4:30 p.m., Fellman called a meeting of employees, attended by Fellman, Albert

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<sup>18</sup>The nature and extent of this offer will be mentioned later herein.

and Jack Lewis, and Levitan.<sup>19</sup> All the employees were assembled at the front of the shop. Fellman testified that his reason for calling the meeting was that the Union had distributed a leaflet which quoted the March 18 agreement which he had signed and which made untrue representations with respect to wage rates and other benefits at Trina and certain other plants. Fellman spoke to the employees for about 20 minutes, discussing these representations and giving his version of the facts.<sup>20</sup> He called attention to the wage provisions of the union

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<sup>19</sup>According to the testimony of Linda Murray, Fellman at this meeting mentioned the fact that Tutt had shown him the pledge cards. If this is a fact, the meeting would have occurred on the evening of March 24. But according to former employee Gertrude Small, she was present at this meeting. Small testified that she quit on an undetermined date. Her name was not on the list of employees on the Trina payroll for March 24. Thus, she would not have heard the speech on the latter date. I find therefore that the meeting was called no later than March 23 and it may have been as early as March 19.

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<sup>20</sup>As I find that this portion of Fellman's speech did not exceed the permissible limits of free speech, I do not detail all that he said. Linda Murray, a witness for the General Counsel, quoted Fellman as saying he called the employees together because the union man had been out and "had showed him some names of some of us who signed up for the union." I believe that Murray was mistaken that Fellman made the quoted statement at this time, because I have found that Tutt had not yet shown Fellman the cards at the time of this meeting.

contract which Tutt had left with him and which Fellman had posted nearby along with a typewritten statement prepared by him on Trina letterhead. (See Appendix A attached hereto.) At the close of his speech, Fellman told the employees to attend the union meetings but to use good judgment before signing pledge cards and to verify the Union's representations of fact. Following Fellman's speech, Lewis spoke with a few of the employees who had gathered around and explained to them the new hospitalization plan that was going into effect. He testified that he knew Fellman's plan was similar to one which California had had in the Los Angeles plant because "I found that out from the insurance agents that came around from different insurance companies and they brought in briefs, and from discussions they had with the girl in the office as to how this plan worked." Linda Murray testified that "before we all went back to the machines, we started drifting one by one, looking at the pamphlets that was put up, and Mr. Fellman had asked if we wanted the union in there and no one said anything and then he asked \* \* \* if there was anyone that didn't want the union and no one said anything, until finally another girl that worked at the California Footwear, Hazel Smith, I believe her name was, stepped up and said she didn't want the union \* \* \* and then Mr. Lewis said he couldn't see where it would benefit us any and that we each had our jobs and as we improved ourselves we would get a raise, but there was 16 or 18 others wanting in there."



Murray testified, "That is all he said, 16 or 18 others wanting in there. He didn't say they were going to hire them \* \* \*" Gertrude Small quoted Lewis as saying that "there was between 16 or 18 people waiting for our jobs any time." Lewis and other witnesses for the Respondents emphatically denied that Lewis made a statement about 16 people waiting for jobs if the crew then working for Trina did not like theirs. Small's memory did not appear to be very accurate. Furthermore, she testified that she left early before the meeting was over. Although Murray's memory seemed better than Small's, I am not convinced that her testimony was accurate in all details. In view of the negative evidence and my doubt as to the complete accuracy of the affirmative testimony, I do not find that Lewis made a threatening statement about 16 or 18 waiting to get in. On April 17 the Union, having heard about Fellman's speech, wrote a letter to the Respondents demanding an opportunity for the Union to address the employees at the shop under conditions similar to those prevailing when Fellman spoke to them. The complaint alleged that the failure of the Respondents to grant the request was a violation of Section 8 (a) (1) of the Act, but under the more recent pronouncements of the Board I find no violation.<sup>21</sup>

On the following day, March 24, Tutt again returned with Knapp, presented to Fellman, in the

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<sup>21</sup>Livingston Shirt Corporation, 107 NLRB No. 109; Cooper's, Inc., 107 NLRB No. 206; Detergents, Inc., 107 NLRB No. 281.



office, a prepared letter of recognition which listed the names of 31 employees and the names of 17 of these for whom the Union had 12 pledge and 5 dues cards; and handed Fellman the pledge and dues cards. According to evidence offered at the hearing, there were 27 production employees on March 24. Four of the dues cards were those of employees who had worked at California's Los Angeles plant. Two of the latter cards, those of Jesus Estrada and Herlinda Hernandez, bore date stamps indicating dues paid through February; one, that of Annie Bell Stamps, bore a date stamp for dues paid through January; and that of Charles Quesenberry, although bearing a date stamp for dues paid through February, had a penned date for March dues and a penciled notation "See Ernie." The fifth dues card, that of Louis Oster, who had not worked for California, bore date stamps indicating payment of February and March dues on March 14. On this card, above the date, in a space where payment of the \$1.00 death benefit payment was customarily shown, was the penciled word "free." Fellman looked through the cards, withdrawing that of Stamps. Then he excused himself and went back into the factory. Fellman testified that, in looking at the cards, he noticed what he called "discrepancies," that, in the factory, he went to Quesenberry, asked if he had paid his dues and was a paid-up member, and got a negative reply; that he asked Quesenberry if the same was true of Hernandez, with whom Quesenberry was friendly, and that Quesenberry said it was. Fellman testified that the

“discrepancy” which he noticed on Quesenberry’s card was that dues were shown to be paid for March, although there was no checkoff of dues at Trina and the checkoff would have stopped with February. He admitted that he suspected how Quesenberry stood in the Union before he questioned him. Returning to the office, Fellman told Tutt that he would not recognize the dues cards. After a brief argument, Tutt and Knapp left.

On March 31 Tutt and Roth returned to the Venice plant, told Fellman that the Union thought it now had a majority of the employees who had signed pledge cards and that the Union would not rely on dues cards. He asked Fellman how many employees there were at that time and Fellman replied facetiously that there were 1624 employees. Tutt again asked and received the same reply. He reminded Fellman that he had signed an agreement to recognize the Union if it showed that it represented a majority of the employees and asked if Fellman intended to carry out that agreement. Fellman replied, according to Tutt, “No, I don’t like your antagonistic attitude when I met with you last week.” Fellman testified that he refused recognition because he felt that there should be an election. There is no evidence that he so stated at this time. On March 31, there were 28 production employees on the payroll. Of these, 12 had signed authorization cards. Two or three employees who had signed cards and who were on the payroll on

March 24 were not on the payroll on March 31.<sup>22</sup> Although Tutt had with him the union authorization cards relied on, he did not, in view of Fellman's refusal to recognize the Union on authorization cards, offer them to Fellman. However, he offered Fellman a letter, similar to the one he had delivered on March 24, listing the names of 15 employees from whom the Union had received pledge cards signed on or before March 30. The evidence does not indicate that Fellman looked at the letter, and Tutt did not leave it with him.

Following the filing of the charges in this case, a meeting was arranged by a state conciliator for April 7. At 10 a.m. that day, Tutt and Fellman met with the conciliator in the latter's office. After discussing the cases of two discharged employees, they discussed the subject of the union contract. Fellman suggested an election, but was told that an election could not be held because of the pendency of charges filed by the Union. At noon, at the conciliator's suggestion, Tutt and Fellman had lunch together. At this time Fellman raised two objec-

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<sup>22</sup>One card was signed by Isabel Rodriguez. There was a Mabel Rodriguez on the payroll, but not an Isabel. It does not appear whether or not they are the same person. Gearline Kelly and Lonie Mae Brown, for whom the Union claimed cards, were not on the March 31 payroll. Brown was not shown on the earlier payroll, either. Although her card was dated March 30, it was excluded from evidence. As my findings do not depend on proof of cards or dues, I have not considered the effect of discrimination against Roark in computing the total.

tions to the contract, first, that he did not wish to sign the contract which was under the name of California, and second, that he believed the seniority clause would prevent a shifting of employees from one job to another. Tutt assured him that the name would be changed to Trina and that the seniority clause would not have the effect of prohibiting a shift of employees. When they returned to the conciliator's office, Tutt said that he understood that Fellman's two objections had been met and that he saw no reason why a contract could not be signed. Fellman said that he had other objections to the contract. When asked what they were, Fellman answered that he would have to study the contract. The meeting ended without agreement. Presumably this was the last meeting concerning the subject of collective bargaining.

## 9. Conclusions on the Refusal to Bargain.

The Respondents do not contest the appropriateness of a unit of production employees for the employer who employs them. The real contest is on the question of who the employer is. If California is the real employer at the Venice plant, there is a refusal to bargain, the General Counsel contends, in California's failure and refusal to give effect to the existing union contract after the move to Venice (thereby repudiating the contract), in the refusal of California to discuss with the Union the transfer of California employees to the Venice plant, and in the fact that unilateral changes in wage rates and other conditions of employment were made by



the use of Trina's employment conditions instead of those under the union contract. Although denying that it was an employer after the move to the Trina plant, California contends that, in any event, the union contract was illegal because it contained a clause reading:

“Apprentices or inexperienced workers with less than 3 months' experience in the shoe industry shall secure work permits from the Union within two weeks of their hiring and shall become members of the Union after 30 days of employment.”

The General Counsel contends that illegality of the quoted clause would have no effect on California's obligations under the contract because the contract contained a separability clause and because the Union had not sought to enforce the clause, had so notified the Respondents, and had, in a letter dated July 14, 1953, proposed to delete the clause in question.<sup>23</sup>

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<sup>23</sup>The contract also contained a clause requiring all employees to become members of the Union after 30 days from the date of their employment with no mention of a grace period for old employees. One statement made by Respondents' counsel leads me to believe that he was not attacking the legality of this clause. To avoid any misunderstanding, however, I find that this clause would be valid under the decision of the Board in *Krause Milling Co.*, 97 NLRB 536. Although the record contains no express reference to a union shop contract before the October 1, 1952, agreement, I note that the Union was certified on August 20, 1951, and in

California did not rely upon the illegality of the contract in discontinuing dealings with the Union in the early part of 1953. Rather it took the position that it no longer had production workers in its employ to whom the contract would apply. Had California raised objection to the illegal clause, the Union might sooner have assented to its elimination. The illegal clause was not essential to the effectiveness of the agreement as a whole and can be eliminated without affecting the remainder of the contract. By the separability clause, the parties themselves expressed their intention to continue the remainder of the agreement in the event that any clause should be determined to be invalid. Such intention was not unlawful.<sup>24</sup> I therefore conclude that California was not relieved of its obligations under the contract by virtue of illegality of the above-quoted clause.

As I have found that California continued to be an employer even after the move to Venice, the only

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Respondents' examination of the witness, Ray Peiffer, it was brought out that he had been employed by California for a few days in the summer or spring of 1952, that he was not then a member of the Union, but that he knew that, if he had continued in California's employ, he would have had to join the Union. I infer that the Union had a union shop contract with California before the one here involved. In the letter of July 14 above referred to, the Union proposed an amendment to the language of this clause.

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<sup>24</sup>N.L.R.B. v. Rockaway News Supply Co., 345 U.S. 71.



question to be decided is whether or not what it did constituted a refusal to bargain. Section 8 (d) of the Act contains a proviso that “where there is in effect a collective bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification (1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof \* \* \*” and complies with certain other requirements. On all the evidence in the case it appears, and I find, that California took fortuitous advantage of its expedient removal of its plant to new leased quarters and resorted to a subterfuge in setting up Trina as a “front” for itself in order to disregard its contract with the Union and to alter the wages and working conditions from those called for by its contract with the Union. Whether or not this was a breach of contract, it was a refusal to bargain within the meaning of Section 8 (a) (5), (1), and 8 (d) of the Act.<sup>25</sup>

I also find that the respondent California refused to bargain collectively with the Union when the Union sought to discuss the transfer of employees from the Los Angeles plant to the Venice plant. Lewis avoided his statutory obligation to bargain

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<sup>25</sup>See *Eva-Ray Dress Manufacturing Company, Inc.*, 88 NLRB 361; *John W. Bolton & Sons, Inc.*, 91 NLRB 989.

about this subject by pretending that California was discontinuing manufacturing and had nothing to do with employment of production employees. If the Union failed to represent a majority of the employees at Venice, that situation could be directly traced to the fact that Lewis had refused to discuss and evaded the request in the matter of transferring employees. From evidence hereafter related, it is even inferable that the Respondents intentionally failed to invite all of California's Los Angeles employees to Venice because of a desire to destroy the Union's majority and to maintain a non-union shop. Because Trina was, as I have found, an alter ego or an agent for California, Trina was, within the scope of that agency, bound by its principal's obligation to recognize the Union and its contract. Its refusal to do so constituted a refusal to bargain within the meaning of Section 8 (a) (5) of the Act. I do not interpret the Union's conduct in attempting to prove to Trina its majority by authorization cards to be a waiver of its right to recognition on the basis of its original certification and extant contract with California. Although the Union suspected that Trina was a front for California, it could not be sure of that until the matter had been fully investigated; so it was justified in following a course based on alternative suppositions.

#### B. Interference, Restraint and Coercion

Conflicts in testimony were numerous. There were no witnesses on either side that could be called

strictly disinterested, but witnesses had varying degrees of interest or bias. Memories varied. In some instances witnesses testified more positively than their memories would seem to warrant. In others, especially with Lewis and Fellman, I received the impression that they should have remembered some things which they testified they had forgotten. In resolving conflicts, I have taken into account the apparent keenness of memories, the possibilities of misunderstanding of spoken words, consistency of testimony within itself, consistency of testimony with other testimony and with known facts, disposition of a witness to depart from the truth, his interest or bias, the conduct of the witness while testifying, and many other factors.

Gertrude Small, who worked at the Trina plant for a few weeks before March 24, 1953, testified that on an occasion when she was working as a packer, the date of which was not fixed, Lewis and Fellman were talking to two women applicants for employment at the end of her workbench, which was "quite a ways from the office"; that Lewis told the women that the Union "wanted to come in there and did they want to join the union, and it seems that the way he was putting it that, well, the union was no good—something"; that one of the women said she belonged to the Union before, and would like to belong to the Union, and did not want to work if there was going to be trouble about the Union; that Fellman said, "Well, we are trying not to have the Union in here"; that the woman said

she wanted to belong to the Union; that she (Small) left before the conversation was finished and that when she returned, the women were gone and she did not thereafter see them. Lewis testified that he remembered no such conversation and Fellman denied that he was present at any such interview. Small's memory in some respects did not appear to be too accurate. Because of this, because of the denials, and because I am skeptical that such blunt statements would be made openly next to an employee whose attitude toward the Union was not known, I do not find that such conversation took place.

Charlotte Parker was employed at Trina about April 6, 1953. About 2 weeks later Lewis asked her if anyone had asked her to join the Union. She replied in the negative, and Lewis remarked that there were some girls in the plant trying to get something started and that there were always a few of those in every plant.

Lois Murray was hired by Lewis at the Venice plant on about April 15. In her second week there Lewis called her to the office and asked her how she liked her job and then asked if she had joined the Union. She said she had not, and Lewis then told her not to because she would be out a lot of money paying union dues. Murray testified, and I find, that she was laid off by Levitan in August and she was recalled by Lewis about 2 weeks before she testified, that Lewis at that time asked her if she had joined the Union and she answered that she had but did not know what it was about when she joined,



that Lewis asked her who had given her the slip to sign (i.e., the pledge or authorization for the Union) and she answered that she did not remember because it was when she had first come to work (in April), and that Lewis remarked it was only someone trying to be smart.<sup>26</sup>

On about March 31 or April 1, Fellman asked employee Anna Cherry what she thought of the Union and then said that it would not do anything for the employees and would close the shop down.

Eugene Piasek, whose discharge is related hereinafter, applied for work and was interviewed by Fellman and Lewis on April 3, 1953. After Fellman had asked Piasek a few questions about his identity, who sent him, and where he had worked before, Lewis asked Piasek if he was a union member. Piasek answered that he had been but falsely explained that he had had an argument with the union business agent and had been "kicked out" of the Union and that this was the reason he had left his prior job. Lewis then told Piasek to come back the next day for a try-out.<sup>27</sup>

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<sup>26</sup>On cross-examination by Respondents' counsel, Murray testified that she was laid off the same day.

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<sup>27</sup>Fellman testified that he did not believe that Piasek was asked if he belonged to the Union; but Fellman could not even remember if Lewis was present at the interview. Lewis testified that there was no reason to ask if Piasek was a union member because Piasek said that he had worked at Ted Saval's, and it was generally known that Saval's

Piasek testified, and I find, that in May, 1953, in a conversation he had at his machine with Albert, Jack Lewis' son, no one else being present, he asked Albert, if it would not be better to belong to the Union than to run away from it, and that Albert replied in the negative, adding, "The first year we belonged to the Union we lost \$10,000." Piasek testified that he then asked what they would do if the Union caught up with them "over here" and that Albert replied that they would move to another city.<sup>28</sup>

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was a union shop; but when asked directly if he or Fellman had put such a question to Piasek, Lewis answered that he could not remember. Both Fellman and Lewis recalled that Piasek had offered an explanation of some trouble he had had with the Union. It is extremely improbable that Piasek would have given an explanation, especially a false one, of his standing with the Union if he had not had the question of his union membership put to him. Because of this and my observation of the manner in which the witnesses gave their testimony about this, I have credited Piasek's version.

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<sup>28</sup>This testimony was taken subject to proof that the Respondents were responsible for Albert's statements. Although Albert's supervisory authority was not great, I find that he had some. But especially because Albert was the son of Jack Lewis and received a higher salary than Trina's president, I find that in the minds of the employees Albert was closely associated with management and that the Respondents were responsible for such utterances as he may be found to have made. *Mansback Metal Company*, 104 NLRB No. 95; *R & J Underwear Co., Inc.*, 101 NLRB 299.



Jack Rosenthal also testified to a conversation with Albert at which no one else was present. On March 25, the day after Tutt had shown Fellman the list of names of employees claimed by the Union to constitute its majority, according to Rosenthal, Albert said to him at his machine that Fellman had seen the list as presented by Tutt and that "little by little those names would be let out." Albert denied having made this statement in substance or effect. Rosenthal's name was not on the list since he had not signed an authorization until later. However, if such a threat had in fact been made, I doubt that Rosenthal, who did not appear to be exceptionally aggressive, would have held the threat so lightly as to sign an application blank on the very next day as he did. Because of this and in view of Rosenthal's interest as an alleged discriminatee at the time he gave his testimony and the completeness and positiveness of Albert's denial in this instance, I credit the denial.

On April 14, 1953, after working hours, the Union held a meeting in a house on Main Street in Venice located about a mile south of the location of the plant. Between 5 and 5:15 p.m. that evening, Lewis was sitting in his parked car almost across the street from the meeting place. Piasek parked his car at the curb a few cars behind Lewis' car, got out on the sidewalk side and walked forward toward the next pedestrian cross-walk. Up to this point, the testimony of Piasek and Lewis coincide. Piasek testified that as he came along the sidewalk opposite

Lewis' car, he recognized it and saw Lewis, alone in the car, lean toward his right side in a manner to conceal his face; that he (Piasek) continued to the cross-walk, crossed the street and stood on the sidewalk with a few others, calling their attention to Lewis, who was then sitting upright looking in their direction. Lewis admitted that he was at the spot testified to by Piasek, but testified that he did not know there was a union meeting scheduled there, and explained his presence there by relating that a friend of his named Friedman had come from Passaic, New Jersey, to visit him; that Friedman asked what the rental situation was, thinking he might move his plant to the West Coast; that Lewis drove Friedman around to see if they could see any signs of vacancies but consulted no realtors; that after a while he parked on Main Street in Venice near a bus stop and talked with Friedman while waiting for the next bus to take Friedman back to his hotel; that Piasek passed on the sidewalk and stopped to talk for 5 or 6 minutes; that Piasek asked what Lewis was doing there; that Lewis explained he was waiting "for this man to grab a bus," that he asked Piasek what he was doing there and that Piasek answered that he was going to a union meeting. According to Piasek's version, he did not speak with Lewis when he saw him near the union meeting place, but the next day at the factory Lewis said to him, "I thought you told me you were not a union member," to which Piasek testified he replied, "I am not. I went to see what is going on over there." Lewis denied the

last part of Piasek's testimony. It is odd that in passing Lewis' car, Piasek, who was apparently on friendly terms with Lewis would not stop to speak or would stand on the opposite side of the street looking at Lewis, who was looking in his direction, without giving some sign of recognition. Lewis' testimony of the manner in which Piasek stopped and spoke with him was given with a lack of restraint or effort that made it sound natural. I find that Piasek did speak to Lewis on the street and I find that if Lewis said, "I thought you told me you were not a union member," he made the statement at this time rather than the next day. On the other hand, there are elements of Lewis' testimony and his explanation of his presence there which make it difficult to believe that his being there was pure coincidence. I am not convinced that Friedman was with Lewis at this time. As I understand the evidence, the Venice plant was close to the Santa Monica line.<sup>29</sup> The route of the bus which Lewis testified his friend was waiting for ran on Main Street into Santa Monica, in which town Lewis had his home. Therefore, the bus would have passed the Venice plant and would have come closer to Lewis' home than the corner near which Lewis testified he had stopped to wait for a bus. This being the case, it would appear to have been more logical for Lewis to put his friend, if he were there, on a bus

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<sup>29</sup>I have taken official notice of a map of Los Angeles which tends to bear this out as the smaller numbered streets are to the north.

near the plant, if Lewis had intended to return there that evening, or to put his friend on the bus in Santa Monica, if Lewis had intended to go home after dropping the friend. A day or two before the meeting, the Union had handed out leaflets to employees at the plant, announcing the time and place of the meeting. The Respondents saw other union leaflets and could have seen this one, too. But regardless of this, I find the circumstances of his being there too much of a coincidence to believe that he was ignorant of the fact that a meeting was being held there. Even if Friedman was with Lewis that evening, I find that Lewis took advantage of the occasion to stop near the union meeting place for the purpose of surveillance.

Jack Rosenthal, one of the alleged discriminatees, testified that he attended a union meeting on March 26, 1953, at which Tutt asked if threatening remarks had been made to anyone there; that he told Tutt there had been to him;<sup>30</sup> that the next day at his machine Fellman asked him about the meeting and Rosenthal said there were not more than a dozen people there, and that Fellman then said that there were eleven people at the meeting—nine from

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<sup>30</sup>This presumably had reference to a conversation which he had had a couple of days before the meeting in which Fellman told Rosenthal, according to the latter, "If I were you, I wouldn't go to that meeting," and when Rosenthal asked why not, Fellman replied, "You might be breaking bread with Jack Lewis some day." I do not find these quoted statements to be coercive.



the shop and two spies. Fellman, without hesitation, flatly denied that the conversation or any part of it had taken place. Although Fellman's testimony was shaded in the direction of the Respondents' interests, he did not appear to me to be inclined to make an unqualified positive denial in an instance where his memory was unimpaired and where he understood the question. Fellman may, in some instances, have given a negative answer to certain questions, where a part of the question could have been answered affirmatively, and where he did not offer to separate the true from the false, but the question here was both as to the whole conversation and any part of it, and Fellman denied both. Fellman did not deny that he had spoken with Rosenthal about union meetings, and although I am satisfied that Fellman may have spoken with Rosenthal on March 27 about the meeting, I do not find that he made the statement as quoted by Rosenthal. If there had been two spies at the meeting, they would have reported to Fellman that Rosenthal had volunteered that threatening remarks had been made to him and that Rosenthal signed a union application. But it does not sound logical that Fellman, knowing this, would confide to Rosenthal that there were spies there unless Fellman was trying to inspire fear. This did not appear in keeping with Fellman's nature.

Piasek testified that he attended the May 12 union meeting, this time going in by the back way instead of by the front, and that the next day Fell-

man came to him as he was working and said, "I thought you were not a union man, and you went last night to the union meeting," and that he said to Fellman "This is a free country, and if I want to go to a union meeting, I will." Fellman testified that he recalled no such conversation, that something along that line could have happened but not as phrased in the question, and not the next day after a union meeting because he did not believe he would have known of it. Fellman also testified that he knew from some source that Piasek was attending union meetings and that the subject "was never covered up between the two of us." I find that Fellman talked to Piasek about the union meeting which Piasek attended but not in the words quoted by Piasek, and I find no violation of the Act on this incident.

Linda Murray testified that on the day that Tutt brought the authorization cards out to show them to Fellman, which she placed on the same day as Fellman's speech to the employees, she called Fellman over to work on her machine, that Fellman then told her, in the presence of an employee named Aldea Callahan, that he was mad at Murray. When Murray asked why, Fellman replied, according to her testimony, that he did not trust anybody any more and asked why she had signed that union card. When Murray, in a surprised or questioning tone of voice said, "I signed the union card,"<sup>31</sup>

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<sup>31</sup>The finding about Murray's tone of voice is based on my observation of her testimony. It does not appear in the record.



Fellman said, according to Murray, "Yes; you did, I know all of them that signed it," and turning to Callahan, Fellman said, "You did, too." Murray testified that Callahan asked Fellman how he knew and that he replied that the union man had been out and had said so. Murray testified that Fellman, a moment later, said, "I know where that rumor came from, now," referring to a rumor in the plant that Lewis was going to fire anyone that joined the Union. Murray testified that she asked where and that Fellman replied it came from Rosenthal. Murray testified that she denied this and said that the rumor came from "the other room." Murray then testified that Fellman asked her if she knew "they could shut the shop down," and that she replied, "Well, that way it wouldn't make no money for nobody." Murray further testified that Fellman spoke to employee Alice Dupuis and asked her why she signed a card; that Dupuis asked, "Jack Lewis can't fire me, can he?" and that Fellman had asked, "Who said he was going to fire anyone?" Fellman was unable to recall the conversations testified to by Murray but admitted that he might have told Murray he had seen some union cards. I find that Fellman made the statements substantially as testified to by Murray, but I find that the incidents occurred on March 24 and not on the same day as Fellman's speech.

On the basis of the foregoing facts, I find that the Respondents interfered with, restrained, and coerced the employees in the exercise of the rights

guaranteed in the Act by the following conduct: Lewis' questioning of Parker, Lois Murray, and Piasek about their union membership or application for membership; Lewis' surveillance of employees attending the April 14 union meeting; Fellman's questioning of Linda Murray, Callahan, and Dupuis about their reasons for signing union pledge cards; and Fellman's questioning of Cherry about her attitude toward the Union. Because it is not clear from Linda Murray's testimony to whom Fellman was referring by the pronoun "they" in his statement that "they could shut the shop down" and because it could have referred to the Union equally as much as to the Respondents and apparently did in his remark to Cherry, I do not base a finding of coercion on this testimony. I do find Fellman's alleged anti-union speech or the Respondents' refusal to give the Union an opportunity to reply under similar circumstances constituted a violation of Section 8 (a) (1) of the Act. The only evidence of a promise of wage increase was Lewis' reference, after Fellman's speech, to the practice of giving 5 cent increases as an employee's work warranted. The Respondents' unilateral changes in wage and working conditions were part of the refusal to bargain, and, like all violations of Section 8 (a) (5), are a violation of Section 8 (a) (1) of the Act.

## C. The Discriminations

## 1. Blanche Roark

Blanche Roark had been employed by California from 1950 to the time it ceased manufacturing operations on Los Angeles Street early in 1953. For her first year, Roark was employed as a sock stitcher and after that as a platform stitcher. During 1952 and until California moved, in about February, 1953, Roark was chief shop steward for the Union. In late December of 1952, Roark, having heard rumors concerning the plant that was to be set up at Venice, made inquiries of Fellman. Fellman told her maybe he could use her later on.

On Thursday, February 5, 1953, Roark went to the Venice plant with Tutt and with Ruth and Ed Morris, two former California employees. The testimony of Roark and Fellman differed to some extent regarding their conversation at that time. It is not clear how much of the conversation between Fellman and Roark may have been overheard by Tutt or the Morrisises. Tutt was not asked about the incident and the Morrisises did not testify. According to Roark, she first asked Levitan if she could have her job back and Levitan referred her to Fellman, who told her that he could probably use her later on and that he would call her on Saturday morning and let her know when she could go to work. Roark testified that when Fellman did not call her, she telephoned him on Saturday and he told her he could not use her then but would call her later. In this conversation, Roark testified, the subject of her

transportation was mentioned and she told him she would make arrangements for it. Fellman never called her. Fellman testified that when Roark came in with Tutt she asked if he had a job for her and he said he did; that she asked when she could come to work and he gave her a specified date;<sup>32</sup> that Roark, who had to travel about 12 miles to the Venice plant, then became "evasive" and uncertain about transportation and left the matter of employment undecided. Fellman testified that Roark telephoned him later about employment and that he told her he did not then have anything for her but "might possibly know something more definite by Saturday," and if he did he would call her. Roark's testimony appeared to be given frankly and her demeanor on the witness stand impressed me favorably. Fellman's memory was so hazy about **certain** conversations with other people that I am not convinced it was clear in this instance. Furthermore, there were indications in his own testimony that he was not certain that he told Roark when to come to work. On the basis of my observation of the witnesses, I credit Roark's version and find that before Roark received the telegraphic offer of employment, hereinafter mentioned, she was not offered employment at the Venice plant.

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<sup>32</sup>On cross-examination counsel for the General Counsel asked: "In your direct testimony you told us a little bit more. You said you told her when to come to work, is that correct?" Fellman answered, "That is, yes, very possible." Later he testified that he told her the day she could come to work, but that he could not recall what day he gave her.



Fellman testified that, before starting at the Venice plant, he told Lewis that there were certain employees of California, who, if available, he would like to have at the Venice plant, and he named Blanche Roark, Ed Morris, Charles Quesenberry, Herlinda Hernandez, and Jesus Estrada. He further testified he personally asked Quesenberry to come to Venice and probably asked Quesenberry with regard to Hernandez because they were "very close." Apparently those were the only two he personally invited, but he did, on application, hire Estrada and an employee named Annie Stamps. Fellman had not told Lewis that Stamps was one of the employees he would like to have. None of the four last-named employees (Quesenberry, Hernandez, Estrada, and Stamps) signed union authorization cards or paid dues after dues ceased to be deducted under the checkoff provisions of the union contract. Subsequently the four were suspended by the Union for nonpayment of dues.<sup>33</sup>

At the time when Roark talked to Fellman at the Venice plant, early in February, an employee named Louis Oster was working about half the time on platform stitching and about half on sock stitching. Oster had never worked at California before. He had been a foreman at one shop, Kay's and before his employment at Trina, in the last of January or

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<sup>33</sup>Late in March, 1953, the Union wrote letters to these four threatening discipline and asking them to appear at a union meeting on April 1. They did not appear.



first of February, 1953, he had been laid off at Casual's of West Los Angeles, a union shop where he was required to be a union member. However, in February, Tutt named Oster a steward and gave him credit as such for dues, and Oster signed a union authorization card between March 24 and 31. Linda Murray, an employee hired by Trina in January, 1953, was doing similar work on a type of slipper that did not require as much skill. Fellman testified that when Roark applied in person for work in early February, he intended to use her to replace Murray or Oster, but that, by the time she telephoned him later, Oster had gone on platform stitching exclusively, had developed his speed on that, and to transfer him then to sock stitching, on which he would have been slower, would have adversely affected his piecework earnings, which Oster probably would not have tolerated. After Oster went exclusively on platform stitching, various operators were used on the sock-stitching operation at different times. Only one platform stitcher and one sock stitcher was needed full time throughout the year. Early in November, 1953, after Roark's name had been added to the complaint, Trina sent Roark a telegram, offering her employment. She telephoned in reply, and Fellman told her the rate which Trina was then paying for platform-stitching work. The piece rate was the same as she had been receiving at California but did not include the cost-of-living bonus which California had paid. Roark, then having other employment, declined the offer. At this time, Oster was still employed; it does not

appear what Fellman intended to do with him if Roark had accepted the offer. At no time did Fellman offer Roark a job as sock stitcher, but he testified that he did not know that she had had any experience except as a platform stitcher, and Roark did not ask for any work except as a platform stitcher.

From the type and length of Roark's employment at California and from the fact that Fellman mentioned her to Lewis as one of the employees he would like to have at the Venice plant, I infer that she was a skilled and competent worker. Since I have found that Trina was not an independent employer but was under the control of California, Lewis was in a position to, and did in many instances, pass on the employment of certain employees. If Fellman had not been influenced by Lewis, I am satisfied that he would have offered employment to all of the employees that he told Lewis he would like to hire, including Roark, and that he would have made sure of Roark's retention by making a definite arrangement with her before her work at the Los Angeles Street plant ended. His failure to do so and his vague answers to her inquiries about employment indicate an intention not to employ Roark but an avoidance of a direct refusal to employ her. If there was work available for Roark when she visited the Venice plant on February 5, as Fellman admitted, I am not persuaded that the situation would have changed materially before she telephoned Fellman on Saturday, February 7, even

if that were the first time that he told her he did not have a job for her. In 2 days' time Oster would not have become so much more proficient in platform stitching that he could not have been transferred to sock stitching. And presumably the difficulty of assigning Oster to other work did not deter Fellman from offering Roark a job in November, by which time Oster certainly would have developed speed on platform stitching. On all the evidence, I conclude that the Respondents refused employment to Roark on February 5, 1953, although work was available.

The General Counsel contends that the real reason for refusing to employ Roark was a discriminatory one, to discourage union membership. The Respondents may argue that any appearance of discrimination is dispelled by the fact that they employed many union members; that sock stitching was done throughout by a member of the Union;<sup>34</sup> that Oster, who did the platform stitching, was a union member. As Oster had been a foreman at Kay's and as such a nonunion man, and as Casual's had a union shop where there would be no choice of not being a member, the Respondents would not necessarily think of Oster as a union advocate when employing him. At least four employees (Quesenberry, Hernandez, Estrada, and Stamps) who had

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<sup>34</sup>It was so stipulated. As there were several employees who performed this operation at different times, I take the stipulation to mean that each was a member or at least an applicant for membership in the Union.

been union members at California's Los Angeles Street plant under a union shop contract exhibited their preference not to be members at the Venice plant where the union shop agreement was not given effect; so quite evidently union membership at a union shop would not convince the Respondents that it proved a disposition to advocate the Union at a nonunion shop. As for the union members who did sock stitching, with one exception, it does not appear how long each remained in employment, how active they may have been on behalf of the Union,<sup>34a</sup> or whether or not the Respondents were aware of their attitude toward the Union when they were employed. Linda Murray was one employee who had done that work, but for what period of time it is not shown. From Fellman's remarks to her, it appears that he had not known her attitude toward the Union before Tutt showed him the names of union applicants on March 24, although she had then been employed for more than 2 months. From the mere fact that there were union members employed at the Venice plant, therefore, I cannot infer a disposition on the Respondents' part either to be favorable to them or to be indifferent. The record is replete with evidence that the Respondents were disposed to maintain a nonunion shop. This is evident from the very subterfuge employed by

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<sup>34a</sup>Roark, as chief shop steward at the Los Angeles plant, would have been known by the Respondents as one of the most prominent and active union members.



California in setting up Trina as apparent employer while retaining substantial control, and thereafter discontinued application of the union contract; from the extensive questioning of employees and applicants for employment about their union membership, applications, or views; from Fellman's speech on March 23; from the fact that, when Tutt sought recognition for the Union on March 24, Fellman, evidently knowing the attitude of certain employees toward the Union, refused recognition on the basis of prior dues payments and, when the Union made a new claim on March 31, without relying on dues payments, Fellman, without assigning any bona fide reason, and without examining the Union's cards, refused recognition; from Lewis' surveillance and from innumerable other indications to be found in the record. On all the evidence, I conclude and find that the Respondents refused to employ Roark on February 5, 1953, because of her union membership and activity, thereby discouraging membership in the Union. But in view of the fact that the Respondents failed to offer Roark employment at the Venice plant before her work ended at the Los Angeles Street plant and the fact that California refused to discuss with the Union the matter of transfer of employees to the new plant, I also find that it was California's intent to terminate Roark's employment permanently at the time when the plant was moved and when Roark was given no more work, and that this resulted from California's desire to escape the obligation of its contract with the Union. Thus,



Roark was the object of discrimination at the end of her employment at the Los Angeles Street plant on about January 30, 1953, as well as on February 5, 1953.

## 2. Anna C. Cherry

Anna Cherry was employed by Levitan for work at the Venice plant at noon on Monday, March 2, 1953, at 75 cents per hour, and until the last week of her employment she was used principally on strap cutting and "spaghetti" cutting. Spaghetti is a thin piping, the cutting of which required no special skill. Cherry was started on spaghetti cutting as training for strap cutting. About a week after Cherry was hired, Levitan informed her that she would get an increase, and she did thereafter receive a 5 cent increase to 80 cents per hour. Cherry testified that she received the increase in her second paycheck. Fellman testified that this did not sound right to him and that it sounded like a bookkeeping error. Cherry's final paycheck stub showed that she was paid at the rate of 80 cents per hour for 32 hours in each of the last 2 weeks of her employment. The other stubs did not indicate the number of hours. Her first week's pay was \$27. As she started at noon on Monday of that week, the dollar amount correctly figures at 75 cents an hour for 36 hours. Her second week's pay was \$25.60. This would be 32 hours at 80 cents. It would not compute properly at 75 cents an hour. Her third week's pay was \$32, which would figure

out at 80 cents an hour for 40 hours. On the basis of Cherry's testimony and the paycheck stubs, I find that Cherry received her increase as she testified. The record is not clear as to what the practice at the Venice plant was with respect to the first wage increase. Linda Murray did not receive a 5 cent increase for 3 months after she was hired. Fellman testified that that was not in keeping with the policy concerning raises and that normally he considered giving a raise after 30 days. It was stipulated that Trina's practice was to pay 95 cents an hour to employees with a minimum of 3 months' experience at Trina. I infer that, within a 3 months' period after hire, employees were given increases as their work appeared to merit it. In the last week of her employment Cherry was assigned to work cleaning shoes.

On March 16, Cherry signed an authorization and application card for the Union. As previously related, on about March 31, or April 1, 1953, Fellman asked Cherry what she thought of the Union. When she did not answer, Fellman said that the Union would not do anything for the employees and it could close the shop down. Cherry walked away without speaking.

On Thursday, April 2, at the end of the day, Fellman told Cherry not to report the next day saying they would have to lay her off; that they did not need her; and that there would be no more straps for a while. Cherry asked when he would call her and he replied that he would call her if

he had anything for her. Fellman testified that when he laid Cherry off he had no intention of recalling her and that he had told her there was no more work for her as "just the easiest way out of it."

Fellman testified that Cherry did satisfactory work cutting spaghetti but that she did not take to cutting straps; that she spoiled a great many straps; that other employees "complained" of her work in the sense that poor cutting would show up in any of the stitching operations; that he called her attention to it "you might say continuously" and cautioned her on her cutting every day. Fellman also testified that, later, shoes were returned because of inaccuracy on strap cutting. He did not know "whether she had cut the straps but it's very possible." Fellman had no complaint about Cherry's work on cleaning shoes.

Levitan testified that Cherry's strap cutting got so bad that Fellman took her off the job and set her to cleaning shoes. Levitan also testified that Cherry complained about being taken off strap cutting and that Fellman then showed Cherry and two other employees a basket of straps, saying, "You see this; we can't use this. You see this. We can't use this basket, either, and a little box in three, four places." Levitan denied that these were straps spoiled at the other plant. Fellman denied that Cherry had complained about working at cleaning.

Cherry testified that she was never criticised while cutting straps and never spoiled any that she

knew of. She testified that she had reworked some spoiled straps which Levitan had told her they had moved from the other plant. Linda Murray, a witness for the General Counsel, who had worked close to Cherry, testified that, after Cherry had been employed a week or two, Levitan stopped and told Cherry she was doing fine and he was going to see about getting her a nickel raise. Murray testified that Cherry was very fast and that her work was of generally good quality. On cross-examination, Murray was asked whether or not there were instances when straps that Cherry had worked on had to be done over. Murray answered, "No, sir; they come from the California Footwear \* \* \* They weren't what she cut."

It is undisputed that strap-cutting work ran out temporarily at the time Cherry was transferred to cleaning in the last week, but Fellman testified that he would have taken Cherry off of strap cutting sooner if there had been more in sight. He also testified that Cherry was not suited to cleaning shoes and that that was why he laid her off, but he could not recall why she was unsuited. In one answer, Fellman indicated that as they could not use Cherry where he wanted to use her, there was in his judgment no place for her.

Linda Murray testified that practically all the other employees who cleaned shoes after Cherry left were union members or applicants. The girl who was used on strap cutting when it was next

done had also signed a union application card.<sup>35</sup>

The Respondents' evidence concerning the excessively poor work that Cherry did on strap cutting was not convincing. I do not doubt that Cherry was responsible for some spoilage, but this was not uncommon. If Cherry had been as bad as she was portrayed, I am convinced that she would have been taken off the strap cutting job before that work ran out,<sup>36</sup> and the fact that she was given an increase so soon after she was hired is inconsistent with the criticism which was leveled at Cherry at the hearing. It is conceded, however, that Cherry was discharged at a time when she was on the job of cleaning shoes. No fault was found in her work at that job. The Respondents did not assert that there was a drop in the amount of cleaning to be done and that, consequently, one employee had to be laid off. The record does not indicate how many employees were doing that work before and after Cherry's discharge. But payroll exhibits in evidence, which were supplied by the Respondents, indicate that the names of four employees who were on the payroll on March 24 were not on the payroll on March 31 and that four new names appear on the payroll on the latter date.

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<sup>35</sup>This was Ruth Seaton, whose card bears the date of January 3.

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<sup>36</sup>Such evidence as appears in the record indicates that the Respondents carefully watched and guarded against waste. It would have been contrary to their nature to keep on a job an employee who was causing excessive waste as they kept Cherry on until strap-cutting ran out.



This would indicate an equal replacement. However, Cherry's name, as one of the four, was omitted from the exhibit purporting to show the payroll on March 31 although she actually was not discharged until April 2.<sup>37</sup> Taking this error into account, I note that on March 31 there were only three old employees gone, while there were four new employees. The record does not reveal to what jobs the new employees were assigned, but as there was no strap cutting at that time it was not for that job. And apparently it was not for one of the more skilled jobs since the skilled workers identified were still there. Cherry would appear to have been as competent as any of the new employees on nonskilled work.

The proximity of time between Fellman's questioning of Cherry about her attitude toward the Union and her discharge, the currency of the question concerning representation, and the changes in the payroll, combine to create a strong suspicion that the Respondents hired new employees and discharged Cherry in order to prevent the Union from getting a majority. But to carry the evidence beyond the realm of suspicion to proof it would be necessary to show that the new employees were still on the payroll on April 2 and that Cherry was replaced at the cleaning job by a new employee. This does

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<sup>37</sup>Can it be that the Respondents actually believed that Cherry had been terminated at the conclusion of her work on strap cutting and that that explains why they came prepared with a ground for discharging her from that job, but had no explanation for her discharge from the cleaning job?

not appear. So far as appears, no one replaced Cherry at cleaning. It is just as possible to infer that Cherry was discharged because there was no need for her services as to infer that she was discharged to keep the Union from getting a majority. The fact that Cherry was discharged rather than laid off, despite what Fellman told her, also creates some suspicion, but the evidence does not indicate that the Respondents made it a practice always to recall laid-off employees before hiring new ones, or that they never laid an employee off with intent not to recall, so the mere fact that at the time of Cherry's layoff Fellman intended not to recall her is not shown to be unusual. For want of sufficient proof, I find that Cherry was not discriminated against.

### 3. Jack Rosenthal

Before Jack Rosenthal was employed at the Venice plant he had a period of employment at California ending some 4 years earlier. In early December or late November, 1952, Lewis telephoned Rosenthal and asked him to return, but Rosenthal said he was satisfied with what he was doing. However, about 2 or 3 weeks later Rosenthal telephoned Lewis and asked if the job was still open. Lewis replied that it was and told Rosenthal to come down to see him. When Rosenthal got to the Los Angeles Street plant Lewis said he did not have an opening at that time but that there would be an opening at another plant near Lewis' home. Rosenthal testified that he asked Lewis, "What part of the place [the

Venice plant] do you own?" and that Lewis answered that he owned all of it. Lewis denied that Rosenthal asked or that he answered as Rosenthal testified. I am not convinced that the question or answer was phrased as Rosenthal put it, but when Lewis was assuring Rosenthal a job at another plant not far from his home, it would be the most natural reaction for Rosenthal to want to know how Lewis could give that assurance. I find that, in some form, Rosenthal asked Lewis' connection with the Venice plant and Lewis indicated that he had an interest which would enable him to speak for it. Rosenthal went to the Venice plant and talked with Fellman, who hired Rosenthal at \$1.75 an hour for the first month. After that Rosenthal was put on a piecework rate. Rosenthal testified that, after Fellman had fixed his initial rate, all later changes in rates he discussed with Lewis.

Rosenthal attended a union meeting on March 26, 1953. At the meeting, Tutt inquired whether threatening remarks had been made to anyone there and Rosenthal told Tutt that he was one to whom such a remark had been made. After the meeting that evening, Rosenthal signed a union application and authorization.

On April 6, the Respondent hired a second clicker machine operator, Eugene Piasek. Whereas Rosenthal had done some overtime work before Piasek was hired, he did none afterwards.

The material customarily cut at the Venice plant was plastics, felts, and compositions. About mid-

April, Fellman said to Rosenthal, "You haven't cut very much leather, have you?" Rosenthal said that he had cut certain types, but Fellman concluded that Piasek had had more experience on cutting leather than Rosenthal. On April 28, Rosenthal was laid off. Fellman told him to come back in 2 or 3 days and there would be work for him. Rosenthal testified that, when he was laid off, Lewis told him that there was no work for either him or Piasek. Albert Lewis told Piasek to come in at 10 a.m. on the day following Rosenthal's layoff. Piasek testified that he did so and, when he came in, Albert told him the reason he had told Piasek to come in at 10 a.m. was because "I fired Jack Rosenthal last night." Albert was not asked specifically if he had told Piasek to come in at 10 a.m. the next day or if he had explained his reason for this the next day by saying it was because "I fired Rosenthal last night."<sup>38</sup> Despite the lack of a specific denial, I am skeptical that such an explanation was made to Piasek. There is an apparent suggestion in this testimony that the Respondents were trying to deceive Rosenthal into believing that there was no work for Piasek either so that Rosenthal would not know that Piasek had been retained to cut leather while he had been laid off. But Rosenthal would not be expected to be in the day after his layoff; so he would not have seen Piasek even at 8 a.m., the customary starting time.

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<sup>38</sup>Counsel for the Respondents asked Albert if he had told Piasek that his father (Jack Lewis) had told him that Rosenthal was fired because of the Union.



As Fellman told Rosenthal to come back in 2 or 3 days, Rosenthal would be expected to see (and did see) Piasek working at that time. No attempt was made to conceal it. Furthermore, Piasek testified on cross-examination that Lewis brought him 150 pairs of leather material to cut the day before Rosenthal was laid off. Obviously, Rosenthal could have seen then that the leather had been given to Piasek to cut. I do not doubt that Piasek was told to come in at 10 a.m. or that he was told the next day that Rosenthal had been laid off, but I find that no connection between the two was mentioned. Piasek also testified that a day after the day that he started at 10 a.m., Lewis came over to his machine, that he asked Lewis why Rosenthal was not working any more and that Lewis said that Rosenthal "made too much trouble here, and to him [Lewis], for the union." Piasek corrected this to "made too much trouble by the union." Lewis denied that he told anyone that Rosenthal was fired for union activity. Actually Rosenthal was not particularly active in the union. I doubt that Lewis would have made a remark in the form in which Piasek put it. Piasek's testimony about the remark indicated some confusion. I find that Lewis did not make the quoted statement.

A few days after his layoff, Rosenthal returned to the plant and spoke with Fellman. Rosenthal testified that Fellman told him that all the cutting would be leather from then on and that he did not feel that Rosenthal was experienced enough to cut



leather. Fellman denied saying that all the cutting would be leather from then on. Insofar as the form of the quotation implies that there would never be more plastics to cut, I credit Fellman's denial. Rosenthal tried to argue and asked for a tryout but Fellman refused and told Rosenthal, "When we can use you, we will send for you." Fellman explained that he refused to give Rosenthal a test because he already had an experienced man (Piasek) to do the work. Fellman testified that 200 pairs of leather parts could be cut in less than a day and that there were from 2,000 to 5,000 pairs to be cut. After Rosenthal left, Piasek worked extra hours, putting in as much as 50 or 55 hours in some weeks, including work on a number of Saturdays in a 2 months' period.

In late May, Fellman sent Rosenthal a telegram asking him to return. Rosenthal went to the Venice plant in response and told Lewis and Fellman that he was "tied up right now" but would know in a few days whether the "deal" that he was working on would materialize, and he said that if it did not, he would return to work. According to Fellman's credited testimony, Rosenthal asked if the job would still be open and Fellman said that they did not contemplate putting anyone on it for the next couple of days. Three or four days later Rosenthal told Fellman that his deal fell through and he wanted to return to work. Fellman told him that they needed him 3 or 4 days before but did not need him then.

According to Fellman, work fell off for some reason in the interim. On November 23, 1953, the Respondents put Rosenthal back to work. The occasion for this is interwoven with the circumstances of the discharge of Eugene Piasek, hereinafter related.

It is apparently the General Counsel's theory that the Respondents laid Rosenthal off, intending not to recall him, because in some manner they learned that Rosenthal on March 26, had offered to the Union, at the meeting that evening, evidence about a supposed threat made by management. If this is the case, the Respondents waited a long time before giving effect to their intent, for Rosenthal was not laid off until late April. It is suggested that there was in fact work for two cutters after Rosenthal was laid off and that absent a discriminatory motive the Respondents would have employed Rosenthal. But the only evidence of the quantity of work on hand is that Piasek did overtime work after Rosenthal left whereas neither had worked overtime when he was there. But even if Piasek had worked as much as 55 hours in one week, which was his estimate of the greatest number of hours worked and which would not have been a constant figure, this is a long way from proving that there was enough business for 80 hours of work a week which would be necessary for two employees. It may be noticed that before Piasek was hired, Rosenthal had done overtime work himself, proving that the Respondents had periods when one man working somewhat

long hours was capable of handling the volume of work on hand.

The General Counsel appears to suggest that the only reason why Trina called Rosenthal back to work at the end of May, after the third amended charge, which included Rosenthal's name, had been filed, was to stop the running of back pay in the case of a discriminatory discharge. If the initial layoff was not discriminatory, the fact that the Respondents might not have offered Rosenthal employment in May but for the fact that a charge was filed cannot, *ex post facto*, convert an economic layoff into an unfair labor practice. The third amended charge mentions the fact that Rosenthal was laid off although he had more seniority than the cutter retained. Whatever obligation California had under its union contracts and regardless of the fact that failure to give consideration to seniority might be a breach of contract, that would not alone prove a discriminatory motive or a violation of Section 8 (a) (3) of the Act. On all the evidence, I find that the Respondents did not discriminate with respect to Rosenthal's hire or tenure of employment because of his union membership or activity and that Rosenthal was in fact laid off because Fellman believed Piasek to be more experienced in cutting leather.

#### 4. Eugene Piasek

Piasek was interviewed for employment by Fellman and Lewis at the Venice plant on April 3, 1953. As previously related, Lewis asked Piasek about his

membership in the Union, and Piasek, who was a union member, falsely stated that he had had difficulties with the Union and had been expelled. Lewis told Piasek to come back the next day, Saturday, and they would see how he could cut. Piasek worked from 9:00 a.m. to 1:30 p.m. on Saturday. Then Fellman took Piasek to the office and told Lewis that Piasek was "cutting reasonable." Lewis gave Piasek the piecework rates and told him to come back on Monday, April 6.

Piasek attended two union meetings, the first on about April 14, when Lewis was parked across the street from the meeting place as related earlier herein, and the second on about May 12. According to Piasek's testimony, the Respondents were aware of his attendance at each meeting.

During a part of July or August, 1953, the Venice plant closed down. After the plant closed, at a time not disclosed by the record, Piasek got a job at another plant. Between the time of the shutdown and the month of October, Piasek returned once or twice. He returned again on about October 14 and talked to Lewis. Piasek testified that Lewis told him to quit the job he was on (Lewis denied this)<sup>39</sup> and return to work the following week. He also testified that he quit his other job as of October 16, but he made no mention of having gone to the plant on that day or on Monday, October 19. He merely testified

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<sup>39</sup>Lewis testified he told Piasek to keep his job "until we started up again."

that he went to the Venice plant on Friday, October 23. Meanwhile, in mid-October, Martin Zell was hired. Zell had been lasting room foreman at another shoe factory and he was hired with the idea that he might become a supervisor at the Venice plant. Zell, a laster, had had some experience on cutting, but I would judge that he was not as experienced a cutter as Piasek. When Piasek came to the Venice plant on October 23 and saw Zell working at the cutting machine, he told Fellman that Lewis had told him to quit his job but had hired another cutter. Fellman said that Zell had not been hired as a cutter but as a supervisor, and he told Piasek to see Lewis. Piasek went to Lewis and complained in the same fashion. Lewis also told Piasek that Zell had not been hired as a cutter but had been hired as a supervisor. After talking for a while, Lewis told him to wait while he went to speak to someone. According to Piasek's undenied testimony, Albert Lewis came in and said, "You see, Gene, my father didn't want to take you back but I made him take you back." Then Lewis returned and told Piasek to call the next day and he would tell him when to come to work. Piasek telephoned Lewis the next day and Lewis told him to come to work on Monday, October 26. Piasek did so and worked the full 5-day week, and the first 3 days of the following week. On Wednesday evening, November 4, Piasek was told to come in the next day as some sponge rubber was coming in to be cut. On Thursday, November 5, the day when the Respondent complied with the subpoena duces tecum in this



case, Lewis and Fellman went to the hearing. That morning at the plant, Albert told Piasek that his father had said he (Piasek) was not to do any cutting that day but would start the following Monday. Piasek did not leave immediately, and at 8:30 a.m. he saw Albert take the sponge rubber to Zell at the machine Piasek used and saw Zell start to work on it.

On Tuesday, Thursday, and Friday, November 10, 12, and 13, Piasek was in the hearing room waiting to be called to the witness stand. On Armistice Day, November 11, no hearing was held, but the plant was operating. Piasek testified that he went to the plant that day and Lewis called him into the office and asked him why he had to testify against him. Piasek testified that he replied, "Listen, Jack, you do such unfair labor practices over here \* \* \* everybody wants to testify against you. This is the truth. \* \* \* You told me to quit a job. I am a cutter, then you hired Martin Zell and put him on the cutting machine and you dismissed me \* \* \* which isn't fair." He further testified that Lewis asked, "Why didn't you tell me?"; that he replied, "You're the boss, I am just the employee. I can't tell you what to do"; and that Lewis said, "I will fire him [Zell] at the end of this week." Lewis denied that there was such a conversation, that there "couldn't be any conversation to that effect because during that period when he was working there there was not a proceeding going on and he wasn't called to testify and I had no way of knowing what the

testimony would be. I couldn't tell one way or another whether he would testify for me or against me or which way. \* \* \*'' Of course, Lewis would have known that on November 10, Piasek was in the hearing room not because he was called as a Respondents' witness, and he could have inferred that Piasek was called by the opposite side. In any event, from observing the witnesses as they gave this testimony, I find that the conversation took place substantially as testified by Piasek.

On Friday, November 13, at the hearing room, Lewis asked Piasek if he would be able to start cutting on Monday, and Piasek replied that he would if he were called to testify that day (Friday) but otherwise he would start working on Tuesday.

On Saturday, November 14, Lewis telephoned Herman Greenberg, who had been a cutter at the Los Angeles plant for 3 years until January, 1953. Lewis asked if Greenberg was working. Greenberg replied that he was and asked if Lewis had "straightened out" with the Union. Lewis answered that he expected to the next week and that then they could get together again.<sup>40</sup> I infer that Lewis, hav-

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<sup>40</sup>This finding is based on Greenberg's credited testimony. On the Respondents' case, Lewis denied that he had called Greenberg. He testified that Greenberg had called him about work early in 1953, but not in November, and that he had not heard from Greenberg for 5 or 6 months. But earlier, when called as a witness for the General Counsel, although denying that he had called Greenberg, he testified that in the fall of 1953 Greenberg had

ing learned that Piasek had not changed his intent to testify, was looking for a cutter to replace Piasek.

Piasek was not on the witness stand until Monday, November 16. On Tuesday, November 17, after he had given his testimony, Piasek went to the plant. When he walked through the office into the packing room he was met by Levitan who told him that they did not need him then, that if they wanted a cutter they would call him. Piasek testified that as he walked back through the office, Albert came over to him and the following conversation took place: Albert said, "Gene, my father and Joe Levitan are sore at you because you testified against him." Piasek said, "Listen, Albert, I testified the truth, didn't I? I didn't lie." Albert said, "Yes, you testified the truth but you know how my father is." Albert denied that any such conversation took place. I have no doubt that Lewis and Levitan were displeased with Piasek's testimony, but I do have some

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called him. In response to the General Counsel's question as to whether Lewis, in that telephone conversation, had said, "Maybe we will get together again in a week or two and you can go to work for me," Lewis answered, "In essence it might have been, but in actual conversation did not. He just wanted to know what was doing in the plant and if we were busy and so on and so forth and did we straighten it out as far as the union was concerned, and I told him we were in the midst of the hearing right now and I couldn't very well tell him one way or another and that is all." The inconsistency in the two portions of Lewis' testimony is obvious. As Greenberg had another job, it is unlikely that he would have called Lewis at all, much less to call for the limited conversation testified to by Lewis.

doubt that Albert was so naive as to tell Piasek that, and I doubt that the conversation, if it occurred, would have been in the form testified to by Piasek. I make no finding that the conversation occurred.

On the week end of November 21, 1953, Fellman and Lewis met with Respondents' counsel at the Venice plant. As a result of the discussion they had there, Fellman, on the same day, sent a telegram to Jack Rosenthal recalling him to work.

On Monday morning, November 23, Piasek went to the Venice plant and saw Rosenthal waiting to start work. Piasek went to Levitan and berated him for not having told him the week before that he was discharging him instead of leaving him uninformed as to his status. Levitan told Piasek that he did not know anything and that he should see Fellman.

At the hearing on November 23, the General Counsel rested, and Respondents' counsel made certain motions, among them a motion to dismiss as to Rosenthal. In the course of his argument on this motion, he announced that Rosenthal had returned to work that morning, that there was work for only one cutter—Rosenthal or Piasek. It was not then specifically stated whether Piasek was discharged or laid off, but in the answer to the supplemental complaint, stated orally on the record on January 5, 1954, the Respondents denied the allegation that Piasek was discharged as alleged.



The Respondents take the position that, as the amended consolidated complaint alleged that Rosenthal was discharged discriminatorily on April 28, 1953, and as the General Counsel had not acknowledged, before November 21, nor in fact before December 4, 1953, when counsel for the General Counsel wrote a letter to Respondents' counsel<sup>41</sup> that Rosenthal had lost his right to reinstatement after he was offered employment in the latter part of May, the Respondents were required to decide whether or not it was advisable, even though they thought Rosenthal was not discriminated against, to cut off any possibility of further back pay and, having decided, on advice of counsel, on the week

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<sup>41</sup>This letter, after the opening paragraph, reads:

"In view of the fact that employee Jack Rosenthal turned down an unconditional company offer of reinstatement in May of 1953 (a fact undisputed in the record) it is the General Counsel's position that he thereby lost his right to reinstatement by reason of the alleged Section 8 (a) (3) violation. Of course, said former employee, should he apply for employment in the future, is entitled to non-discriminatory consideration as a new applicant for employment.

"We urge the companies, through you as their attorney, to immediately reinstate Eugene Piasek to the position of cutter, and invite you to participate with us in a case settlement conference at your earliest convenience. Pending such conference, and apart from it, we urge the immediate reinstatement of Eugene Piasek and, in that connection, we assure you that the General Counsel does not make, and at no time has made any claim that cutter Jack Rosenthal is entitled to reinstatement (or back-pay after date of unconditional offer) by reason of the alleged Section 8 (a) (3) discrimination."



end of November 21, that it would be advisable, they immediately recalled Rosenthal and that Rosenthal's return necessarily eliminated Piasek. On the record, I find that Respondents' counsel had, before December 4, 1953, some reason to believe that the General Counsel was not conceding that Rosenthal's right to reinstatement was cut off in May, 1953. The question to be decided is whether or not the reason given by the Respondents was the one which actually motivated them in replacing Piasek with Rosenthal. Doubt that it was arises from (1) the fact that the Respondents delayed so long in making the decision to offer reinstatement to Rosenthal, (2) the fact that Lewis and Levitan were obviously displeased with Piasek's testimony and gave him no more work after he had testified, and (3) the fact that the Respondents presumably made their decision to employ Rosenthal over the week end and quickly acted on it, knowing that the action would be viewed with suspicion, and not taking the trouble to consult with the General Counsel's representative concerning the move.<sup>42</sup>

With respect to the first point—the long delay—it may be noted that the Respondents did offer Rosenthal reinstatement in May after the filing of the charge of discrimination against him. If there had been a discrimination against him, that uncondi-

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<sup>42</sup>Counsel for the Respondents testified that he would not have known how to get in touch with counsel for the General Counsel during the week end.

tional offer would have terminated the Respondents' responsibility when Rosenthal failed to accept it. Of course, a new unfair labor practice might have arisen if the Respondents, having work for him, discriminatorily refused him employment a few days later when he offered his services. But if the Respondents were concerned with this point, they apparently gave no thought to the replacement of Piasek with Rosenthal as a solution until after Piasek had given his testimony. It might be argued that it was Piasek's testimony that made it appear that the refusal of employment to Rosenthal when he applied for work after his deal fell through was an unfair labor practice. I am not persuaded that this argument has much force. All the evidence indicated that, with the exception of two short periods when Fellman or Zell did cutting, the Respondents had managed with one cutter—Piasek. The Respondents might, at those times, have eliminated any question of back pay to Rosenthal by recalling him to do that work, but apparently it was not considered important enough to do so. Likewise, after the summer layoff and after Piasek had gotten another job, they could have explained to him that they deemed it advisable to take Rosenthal back in order to safeguard themselves against the possibility of increasing back pay for Rosenthal. In sum, there were several other times when it would have been more logical for the Respondents to recall Rosenthal, if they were going to, than the time they actually did.

Evidence of the Respondents' displeasure with Piasek is found in the Armistice Day conversation between Lewis and Piasek, Lewis' action on the following Saturday to see if Greenberg was available as a cutter, Levitan's refusal to permit Piasek to work at all following the day he testified, and, without notice to Piasek, recalling Rosenthal to take Piasek's place. When Levitan told Piasek on November 17: "Listen, Gene, we don't need you now. If we need a cutter we will call you," Piasek apparently interpreted the statement as a temporary layoff. I interpret it, in the light of all the evidence as a complete termination.

With respect to the apparent suddenness of the decision to recall Rosenthal without consulting with counsel for the General Counsel, it is significant that in testifying about the conference which Perkins, Lewis, and Fellman held at the plant on the week end of November 21, Fellman did not testify that any question was raised by Lewis or Fellman concerning the discharge or layoff of Piasek. Fellman testified: "It was a very brief thing, a question of who to hire and who to call back for the cutting and asking Mr. Perkins if he thought it advisable to call Mr. Rosenthal back." Perkins testified about the conference: "The question of putting a cutter to work came up. I don't recall exactly how but I think I probably asked in view of the testimony going on here whether there was any work for a cutter, and, if so, what kind, and what kind of material they were running." Perkins did testify:

“\* \* \* I believe it was stated to me that except for this suggestion of mine about taking Rosenthal back that Trina was going to call Piasek back. I think that information came up when I was asking him what cutting work there was to be done and what the prospects were and I believe I was informed by Mr. Fellman or by somebody there that there was some cutting work to do and it was intended to call back Piasek.” Later when asked whether he had taken into account, in making his recommendation, the position that the General Counsel might take with regard to Piasek in the event he were discharged and Rosenthal were rehired, Perkins replied: “Well, I believe I considered that. At the time I gave the advice, I don’t know that it was discussed.” Failure to take the question up with counsel for the General Counsel before acting on the decision appears particularly significant. The fact that the matter could not have been discussed with the latter before Monday morning, November 23, is a weak excuse since the delay of an additional day after such a long delay up to that time would have meant little in the way of additional liability for back pay for Rosenthal, especially in comparison to the amount that might be involved if Piasek were found to have been discriminated against. Unless the Respondents had already discharged Piasek in anger because of his testimony at the hearing and were adamant in opposing his further employment, I cannot believe that counsel would have permitted them to run the risk that could be avoided by waiting until Monday morning.

After the filing of the charge with respect to Piasek, the General Counsel notified Respondents' counsel of his position regarding Rosenthal and Piasek, stating that the May, 1953, offer to Rosenthal was deemed to cut off back pay for him and urging reinstatement of Piasek. The request was refused, although it was apparent that, if any back pay were to be involved, it would then be for Piasek and not for Rosenthal.

On all the evidence in the case, I am convinced and find that Piasek's employment was terminated on November 17, 1953, the day following his testimony in the hearing in this case and not on the following week end when Rosenthal was recalled. At the time of the week-end conference, I find that the question raised was not whether Piasek should be discharged and Rosenthal recalled, but what the Respondents were to do about getting a cutter for a position already vacant. Although Perkins was not positive about it, there may have been some discussion about Piasek. The fact that Rosenthal was out of work and that the unfair labor practice charge involving him had not been settled offered an appealing solution to the problem. I am convinced and find that, but for the Respondents' having already discharged Piasek for having testified against them, the Respondents would not have recalled Rosenthal when they did. I find, therefore, that by discharging Piasek on November 17, 1953, the Respondents discriminated against him in violation of Section 8 (a) (3) and (4) of the Act.



The supplemental complaint, as amended at the hearing, also alleges that Piasek was discriminatorily laid off on October 16, 19-23, inclusive, and on November 5, 6, 9, and 11, 1953. I have found no evidence that Piasek presented himself for work at the Venice plant before October 23. As a result of his conversations that day and the next, he was started to work on Monday, October 26. I find no evidence of discrimination or even a layoff in October. Piasek was laid off on November 5 and 6 but was told to report back to work on November 9 and, so far as the record discloses, he may have done so. It is apparently the theory of the General Counsel that the layoff on November 5 and 6 was discriminatory because the available cutting work was given to Zell instead of to Piasek. By November 5, Zell, who had been started on a piece rate basis, was getting a salary of \$85 a week, apparently having been given supervisory status. Piasek was paid on a piecework basis. Because Zell had to be paid his salary whether or not there was work for him, the Respondents may have deemed it more economical to let him do the cutting work. If there was any discrimination against Piasek on those days, it does not appear to have been motivated by his union membership or activity. Piasek appeared at the hearing on Tuesday, November 10. He was at the plant on November 11, the day Lewis called him to the office to ask Piasek why he had to testify in the case. Piasek did not testify that he did not work on that day and there is no other evidence thereon. I find, therefore,

that Piasek was not discriminatorily laid off before November 17.

#### IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondents, set forth in Section III, above, occurring in connection with the operations of the Respondents described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. The Remedy

Having found that the Respondents engaged in certain unfair labor practices, I shall recommend that they cease and desist therefrom and that they take certain affirmative action designed to effectuate the policies of the Act.

California served notice of termination of its contract with the Union on the expiration of a year after its effective date. It may be argued that it was under no duty thereafter to bargain with the Union without proof of a majority. However, I have found that the Respondents' unfair labor practices had the effect of undermining the Union and of dissipating its majority. The situation prevailing before the commission of the unfair labor practices can be restored only if the Respondents are required to recognize and to bargain with the Union. Trina was acting as an agent or alter ego of California. As this

relationship was terminated on January 1, 1954, and as Trina has not been shown to be acting on California's behalf thereafter or even shown to be in operation since that date, I shall limit the recommendation to bargain to the Respondent California and its partners, agents, successors, and assigns, except to the extent that Trina may hereafter act on behalf of California.

It is the contention of the General Counsel that the remedy should include a restoration *ab initio* of wages, rates, and other conditions called for by the Union's collective bargaining contract, which terms and conditions were unilaterally changed by the Respondents. I have found this unilateral conduct to be a violation of both Section 8 (a) (1) and (5) of the Act, but I have grave doubts of the propriety of such a remedy as that suggested by the General Counsel. Specific losses to individual employees as a result of such changes have not been shown, and I do not believe it wise to require action of unascertained limits. Normally, damages for breach of contract are determined in a court action, and Section 301 makes it possible for a Union to sue for such damages in Federal Courts where proof may be offered of specific losses or damages. Although a breach of contract may be also an unfair labor practice, I do not believe it would effectuate the policies of the Act to disregard the borderline between the two. Furthermore, if the parties comply with the recommendation to bargain herein made, it is conceivable that they may work out a solution which will more appropriately settle the dispute than an

order in general terms would do. I shall, therefore, make no recommendation with respect to retroactive restoration of contract terms.

Both Respondents were employers at the time of the discriminations against Roark and Piasek. But as Trina is not shown to be in business and no longer has any connection with the plant where Roark and Piasek were entitled to employment, only California would have control over their positions. Therefore, I shall recommend that California offer them reinstatement to their former or substantially equivalent positions<sup>43</sup> without prejudice to their seniority or other rights and privileges. Both Respondents are, however, responsible for any loss suffered by Roark and Piasek as a result of the discrimination against them, and I shall recommend that the Respondents jointly and severally make them whole for any loss suffered by them by paying to each a sum of money equal to that which he would normally have earned from the date of the discrimination against him to the date of the offer of reinstatement<sup>44</sup> less his net

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<sup>43</sup>The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch, 65 NLRB 827.

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<sup>44</sup>The period of discrimination in Roark's case is February 1 to about November 1, 1953, the date when she was offered reinstatement; in Piasek's case, from November 17, 1953, to the date on which California shall have offered him reinstatement. Trina's liability to Piasek shall not extend beyond January 1, 1954, when it severed its connection with California and ceased doing business.

earnings<sup>45</sup> during such period. Such sums are to be computed on a quarterly basis in accordance with the Board's established practice.<sup>46</sup>

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

### Conclusions of Law

1. United Shoe Workers of America, Local 122, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Blanche Roark and Eugene Piasek because of their union membership and activities, thereby discouraging membership in the Union, the Respondents have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Eugene Piasek because he gave testimony in the hearing in this case, the Respondents have engaged in, and are engaging in, an unfair labor practice within the meaning of Section 8 (a) (4) of the Act.

4. All production workers employed in the California Footwear Company plant at 253 South Los

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<sup>45</sup>Crossett Lumber Company, 8 NLRB 440, 497-8. See also Republic Steel Corporation v. N.L.R.B., 311 U.S. 7.

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<sup>46</sup>F. W. Woolworth Company, 90 NLRB 289; N.L.R.B. v. Seven-Up Bottling Co., 344 U.S. 344.



Angeles Street, Los Angeles, California, prior to February 1, 1953, and all production workers employed at the Respondents' plant at 222 Main Street, Venice (Los Angeles), California, since February 1, 1953, excluding executive, administrative, sales, clerical, maintenance employees, truck driver, guards, professional and supervisory employees as defined in the Act, constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. United Shoe Workers of America, Local 122, is now, and at all times material herein has been, the exclusive representative of all the employees in the above-described unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

6. By refusing to bargain collectively with the Union, the Respondents have engaged in, and are engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

7. By the foregoing conduct and by interfering with, restraining, and coercing their employees, the Respondents have engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

9. The Respondents have not discriminated in regard to the hire and tenure of employment of Anna Cherry or Jack Rosenthal.

## Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in the case, I recommend that:

Jack Lewis and Joe Levitan, a co-partnership doing business as California Footwear Company, its partners, agents, successors and assigns, and Trina Shoe Company, a corporation, its officers, agents, successors, and assigns (to the extent that it has acted or in the future may act on behalf of Respondent California Footwear Company or its partners, agents, successors, or assigns) shall:

1. Cease and desist from:

(a) Discouraging membership in United Shoe Workers of America, Local 122, or any other labor organization of their employees, by terminating the employment of any of their employees discriminatorily and by thereafter failing and refusing to reinstate them, or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of employment.

(b) Discharging or otherwise discriminating against any employee because he has filed charges or given testimony under the Act.

(c) Refusing to bargain collectively upon request with United Shoe Workers of America, Local 122, as the exclusive representative of all production employees employed in the appropriate unit hereinabove found.

(d) In any other manner interfering with, restraining, or coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which I find will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Shoe Workers of America, Local 122, as the exclusive representative of the employees in the bargaining unit, described above, with respect to wages, rates of pay, hours of employment, or other conditions of employment.<sup>47</sup>

(b) Offer to Eugene Piasek immediate and full reinstatement to his former or substantially equivalent<sup>48</sup> position without prejudice to his seniority or other rights and privileges.<sup>49</sup>

(c) Make whole Blanche Roark and Eugene Piasek for any loss suffered by them, as a result of

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<sup>47</sup>Trina will not be obliged to bargain so long as it does not act in California's interest as an employer.

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<sup>48</sup>The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch, 65 NLRB 827.

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<sup>49</sup>Except to the extent that Trina may after January 1, 1954, represent California as it did in 1953, this offer is to be made by California alone.

the discrimination against them, in the manner set forth in the Section entitled, "The remedy," above.

(d) Upon request, make available to the Board or its agents, for examination or copying, all payroll, social security, and personnel records necessary to analyze the amounts of back pay due under the terms of this Recommended Order.

(e) Post at the Venice plant copies of the notice attached hereto and marked "Appendix B." Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region (Los Angeles, California), shall, after having been signed by the authorized representative or representatives of the Respondents, be posted by California immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent California to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the said Regional Director, in writing, within 20 days from the date of the service of this Intermediate Report and Recommended Order of what steps the Respondents have taken to comply herewith.

It is recommended that, unless on or before 20 days from the date of service of this Intermediate Report and Recommended Order, the Respondents shall have notified the aforesaid Regional Director

in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondents to take the action aforesaid.

It is further recommended that the complaint be dismissed with respect to Anna Cherry and Jack Rosenthal.

Dated this 28th day of April, 1954.

/s/ JAMES R. HEMINGWAY,  
Trial Examiner.

## Appendix A

Fellman's Letter to Employees on About  
March 23, 1953

Trina Shoe Co.  
Costa Mesa, California  
Beacon 6052

### A Statement of Facts

In view of the fact that the United Shoe Workers Union has distributed leaflets headed by a statement bearing my signature, I feel that I must explain my connection with it.

Because of the many inaccuracies in the leaflet and the false inducements offered by the union, I do not want anyone to get the impression that my



signature is in any way an endorsement of the union or their promises.

The facts are as follows: I was approached by the representatives of the union and presented with a contract which they asked me to sign. I took the position and signed a letter to the effect that I would not sign the employees to anything without their consent and demand.

Their efforts to sign a majority has led them to make extravagant promises and statements which are contrary to fact as follows:

Union scale does not offer \$1.00 minimum (sic) per hour as evidenced by section on wages taken from their contract and posted for your inspection. Wage increases are not intended by their contract as underlined in Paragraph 2C.

All Shoe Factories in Southern Calif. are not union. In fact, out of five factories making the same type and price shoe as ours only one is union. These factories by name are:

L. A. Shoe—Pasadena.....	Non-union
EmBee—Los Angeles .....	Non-union
Puritan Shoe Co.—Los Angeles.....	Non-union
Trina Shoe—Venice .....	Non-union
Kay Shoe Co.—Los Angeles.....	Union

Other benefits promised by the union you already have.

Namely:

Paid Holidays

Paid Vacation

4 Hours call in pay (State Law)

Hospitalization

Surgical, Medical and Life Insurance

Note also:

The union is offering you an application for \$1.00. This fee does not cover membership.

Our policy can be summed up as follows. We respect the right of any worker to seek employment without payment of fees or being subject to the prejudices of a union hiring hall.

Signed:

.....,  
MAURICE FELLMAN  
Pres. Trina Shoe Co.

(In script): Any further questions, feel free to discuss with me.

## Appendix B

### Notice to All Employees Pursuant to

The Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, the undersigned California Footwear Company and (to the extent that it may have acted, or may in the future act, on behalf of California Footwear Company) Trina Shoe Company hereby notify all employees at the plant at 222 Main Street, Venice, California, that:

We Will Not discourage membership in, or activities on behalf of, United Shoe Workers of America, Local 122, or any other labor organization, by discriminating in regard to the hire or tenure of employment or any term or condition of employment of any employee.

We Will Not discharge or otherwise discriminate against any employee because he has filed charges or given testimony under the Act.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to join or assist United Shoe Workers of America, Local 122, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

We Will bargain collectively, upon request, with United Shoe Workers of America, Local 122, as the exclusive representative of all our employees in the bargaining unit described below concerning wages, rates of pay, hours of employment, and other conditions of employment. The bargaining unit is:

All production workers excluding executive, administrative, sales, clerical, maintenance em-

ployees, truck driver, guards, professional and supervisory employees, as defined in the Act.

We Will offer Eugene Piasek immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges.

We Will make whole Blanche Roark and Eugene Piasek for any loss of pay they may have suffered by reason of the discrimination against them.

All our employees are free to become, remain, or refrain from becoming or remaining members in the above-named Union or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

CALIFORNIA FOOTWEAR  
COMPANY,

(Employer.)

Dated .....

By .....,  
(Representative) (Title)

TRINA SHOE COMPANY,  
(Employer.)

Dated .....

By .....,  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof and must not be altered, defaced, or covered by any other material.

United States of America Before the  
National Labor Relations Board

Case No. 21—CA—1659

JACK LEWIS AND JOE LEVITAN, d/b/a CAL-  
IFORNIA FOOTWEAR COMPANY,

and

UNITED SHOE WORKERS OF AMERICA,  
LOCAL 122.

Case No. 21—CA—1658

TRINA SHOE COMPANY,

and

UNITED SHOE WORKERS OF AMERICA,  
LOCAL 122.

Case No. 21—CA—1863

JACK LEWIS AND JOE LEVITAN, d/b/a CAL-  
IFORNIA FOOTWEAR COMPANY, AND  
TRINA SHOE COMPANY,

and

UNITED SHOE WORKERS OF AMERICA,  
LOCAL 122.

DECISION AND ORDER

On April 28, 1954, Trial Examiner James R. Hemingway issued his Intermediate Report in the above-entitled proceeding, finding that the Respond-



ents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as more fully set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondents had not engaged in certain other alleged unfair labor practices, and recommended that the complaint be dismissed with respect thereto. Thereafter, the Respondents and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in these cases,<sup>1</sup> and hereby adopts the findings,<sup>2</sup> conclusions, and recommendations of

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<sup>1</sup>Following the issuance of the Intermediate Report, the parties entered into a stipulation setting forth certain additional facts with respect to the sales by Respondent Trina to Respondent California during 1953. The aforesaid stipulation is hereby accepted and made part of the record herein.

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<sup>2</sup>On the basis of the facts set forth in the Intermediate Report, we find that during 1953 the Respondents constituted a single employer for jurisdictional purposes. We further find, on the basis of the Respondents' direct out-of-state sales and shipments, valued in excess of \$50,000, that it would effectuate the policies of the Act to assert jurisdiction herein over both Respondents. *Jonesboro Grain Drying Cooperative*, 110 NLRB 481, at pp. 483-484.

the Trial Examiner,<sup>3</sup> with the following additions.

1. We agree with the Trial Examiner that Respondent California was under a statutory obligation to bargain with the Union with respect to moving the plant to Venice; that it violated this obligation by refusing to discuss with the Union the transfer of the employees to the new location, for the false reason that it had no control over the management of the new plant; and that the Respondents engaged in unlawful interrogation and surveillance, following the move, for the purpose of defeating the Union's efforts to obtain adherents among the Venice employees.

The Trial Examiner also found, and we agree, that the Respondents unlawfully refused to bargain with the Union after the removal of the plant from Los Angeles to Venice. The Respondents refused to apply the bargaining agreement covering the Los Angeles employees to the Venice employees; unilaterally established wages and working conditions at Venice which differed substantially from those required by the bargaining agreement; and refused to recognize the Union as the representative of the employees at the Venice plant. By these actions, the Respondents clearly refused to bargain with the Union.

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<sup>3</sup>Acting Chairman Rodgers would find that the Respondents violated Section 8 (a) (1) of the Act by surveillance and interrogation; Section 8 (a) (4) by discharging Piasek; and Section 8 (a) (5) only in the manner indicated in his dissenting opinion.

In disagreeing with the Trial Examiner's conclusions that the refusal to bargain mentioned in the last preceding paragraph was unlawful, our dissenting colleague rests his contrary conclusion on the sole fact that there was an economic reason for the removal of the plant to Venice. In so doing he ignores the presence and significance of an important additional fact found by the Trial Examiner as follows:

“On all the evidence in the case it appears and I find, that California took fortuitous advantage of its expedient removal of its plant to new leased quarters and resorted to a subterfuge in setting up Trina as a ‘front’ for itself in order to disregard its contract with the Union and to alter wages and working conditions from those called for by its contract with the Union.”

Specifically, as detailed in the Intermediate Report, Respondent California made a contractual arrangement with one of its own foremen, Fellman, who with his wife owned a corporation called Trina, under which Trina was the ostensible employer at the Venice plant. However, the Trial Examiner found that “In reality, the effect of the arrangement was that Fellman lent his corporate structure to California for the sake of appearance but occupied, himself, a position akin to that of foreman for California.” Accordingly, the Trial Examiner found and our dissenting colleague agrees that despite the superficial formalities, “California was, during

1953, in reality the principal and Trina was its alter ego or agent," in the operation of the Venice plant.

Under these circumstances the fact that there was an economic reason for removal of the plant ceases to be controlling. We can see no real difference between the case of an employer who decides to move his plant to run away from his union rather than for economic reasons, and an employer who, as here, moves his plant for economic reasons but decides to utilize the move as an opportunity to get rid of the union, resorting to deceit and subterfuges including the setting up of a false front in an effort to conceal the fact that he remains the employer while he pretends to the union and his employees that he has ceased production and has nothing to do with employment at the new location.<sup>4</sup> That the union cannot muster a majority at the new plant because the conduct has achieved its desired end is no more material in finding and remedying a violation of the existing obligation to recognize and bargain with the union in the latter situation than in the former. We cannot agree with the suggestion of our dissenting colleague that it is not unlawful and not a violation of Section 8 (a) (1) and (5) of the Act for an employer to embark on a course of conduct

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<sup>4</sup>The fallacy in our dissenting colleague's approach which treats the mere existence of economic reasons to move the plant as controlling is apparent if we consider its application to an economic layoff. The mere fact that economic reasons require that some employees be laid off does not immunize an employer from liability for utilizing a layoff as an opportunity to undermine the union in accomplishing it.

specifically designed to dissipate the majority status of a collective bargaining representative, simply because the context in which he engages in such conduct is a removal of his plant to a new location for economic reasons.

Moreover, viewing this case in the most favorable light possible to the Respondents, it is one where the Union's loss of majority is solely because of conduct which in part is lawful (an economic decision to move the plant) but in part is unlawful in the subterfuges adopted to utilize the move as an opportunity to rid the employer of the Union. In such circumstances the well-established principle is that the burden is upon the Respondents to disentangle the consequence of their lawful conduct from the consequences of their unlawful conduct; and hence to establish that the Union's loss of majority resulted from their lawful conduct;<sup>5</sup> failing this, the Union's loss of majority must be deemed to flow from their unlawful conduct.

The Respondents here have failed to meet this burden. The most that can be said for the Respondents is that, because of their bad faith conduct, we cannot know for certain whether, if Respondent California had bargained in good faith concerning the transfer of the employees from Los Angeles to Venice, and had not deliberately misled the Union

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<sup>5</sup>N.L.R.B. v. Swinerton, et al., 202 F. 2d 511, 515-516 (C.A. 9), cert. den. 346 U.S. 814; N.L.R.B. v. The Barrett Company, 135 F. 2d 959, 961-962 (C.A. 7).



and the employees as to the Respondents' future plans and their continuing identity as a single Employer, a sufficient number of the employees would have transferred to have preserved the Union's majority. But this lack of certitude is not enough to exculpate the Respondents from the consequence of their unlawful conduct; as the uncertainty was created by the Respondents, it must be resolved against them.<sup>6</sup>

Contrary to the assertion of our dissenting colleague, the Brown Truck and Trailer case<sup>7</sup> is distinguishable on its facts from the present case, and is therefore inapplicable. In Brown, the refusal to bargaining concerning the transfer of the employees was motivated by no more than an erroneous belief as to the extent of the obligation to bargain under the Act. Here, however, Respondent California was well aware of its obligations under the Act, but chose to disregard them as part of a plan to eliminate the Union as the representative of its employees. In Brown there was lacking the element of a plan to escape the Union by subterfuge in the course of the move. In Brown, moreover, the dis-

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<sup>6</sup>N.L.R.B. v. The Barrett Company, *supra*. See also Tennessee-Carolina Transportation, Inc., 108 NLRB 1369, 1371, footnote 4, where the Board, including our dissenting colleague, pointed out that whether or not employees would have accepted an offer of employment was not susceptible of any objective test unless and until the offer was made.

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<sup>7</sup>Brown Truck and Trailer Manufacturing Company, Inc., 106 NLRB 999.

tance between the old plant and the new, and the new, and the fact that the two plants were located in two separate cities, 30 miles apart, one, Charlotte, with a population in excess of 130,000, the other, Monroe, with a population of approximately 10,000,<sup>8</sup> raised problems with respect to such physical factors as transportation and relocation which raised serious doubts that a majority of employees would have transferred to the new plant even if the Respondent there had bargained in regard to transfers. Here, however, the two plants are only fifteen miles apart and both are located in the Los Angeles metropolitan area, Venice being only a suburb of Los Angeles. We do not believe such a move as this would place the plant beyond normal commuting practices in such metropolitan areas.

The interpretation which our dissenting colleague places upon the Brown case would in effect establish an inflexible rule that the removal of a plant for economic reasons, no matter what the circumstances surrounding the move, terminates any preexisting obligation to bargain with the employees' representative, which obligation is not revived unless that representative establishes a new majority at the new location. We cannot agree that such a result is either required by the Act, or is necessary in order to effectuate its policies. We believe, rather, that effectuation of the policies of the Act requires that the Board, in this type of case as in any other, not permit an employer to profit by his own unlawful

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<sup>8</sup>Rand McNally-Cosmopolitan World Atlas, 1954 edition.

conduct; each case of this type must therefore be decided on the basis of its own facts, including both the character of the employer's conduct and the probabilities resulting from the surrounding physical circumstances. In view of these considerations, therefore, and on the basis of the facts in this case, we find that, in the absence of affirmative evidence that a majority of the Los Angeles employees would not have transferred to Venice if the Respondents had fulfilled their obligations under the Act, it is not unreasonable to believe that they would have done so. We further find, in agreement with the Trial Examiner, that the Union's loss of majority was directly attributable to the Respondents' unfair labor practices, and that by refusing to recognize and bargain with the Union at Venice, the Respondents violated Section 8 (a) (5).

We further disagree with our dissenting colleague that the preexisting contract did not continue in effect after the removal of the plant from Los Angeles to Venice, although we do agree that the term "in effect," as used in Section 8 (d), is to be construed in the light of the Board's contract bar doctrines.<sup>9</sup> Under such doctrines, a change in the situs

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<sup>9</sup>The Board has also held, without specific reference to Section 8 (d), that an employer's obligation to recognize and bargain with a contracting union continues throughout the period when the contract would bar a determination of representatives. *Hexton Furniture Company*, 111 NLRB 342; *Royal Cotton Mill Company, Inc.*, 109 NLRB 186; *Sanson Hosiery Mills, Inc.*, 92 NLRB 1102, enf. 195 F. 2d 350 (C.A. 5); cf. *Sears Roebuck & Company*, 110 NLRB 226.

of operations does not remove a contract as a bar when the operations and physical equipment remain substantially the same, and a substantial percentage of the employees at the old plant have transferred to the new.<sup>10</sup> Here the operations and physical equipment remained substantially the same and, as we have found, the failure of a substantial number of the employees to transfer from Los Angeles to Venice must be attributed to the Respondents' unfair labor practices. As effectuation of the policies of the Act requires that conditions at the Respondents' plant be restored as nearly as possible to those which would have existed in the absence of the Respondents' unfair labor practices,<sup>11</sup> the contract must therefore be deemed to have remained "in effect" until it could lawfully be terminated in accordance with the requirements of Section 8 (d). As the contract was still "in effect" at the time the Respondents refused to apply it to the Venice employees, and unilaterally changed the wages and working conditions of their employees, we find, in agreement with the Trial Examiner, that the Respondents thereby unlawfully refused to bargain with the Union, within the meaning of Section 8 (d) and Section 8 (a) (5).

2. We also agree with the Trial Examiner that the Respondents discriminated against Blanche

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<sup>10</sup>The Mennen Company, 105 NLRB 677; Pluss Poultry, Inc., 100 NLRB 64.

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<sup>11</sup>Ford Motor Company, 31 NLRB 994, 1099-1101.



Roark, chief steward of the Union, both at the time her employment at the Los Angeles plant was terminated, and on February 5, 1953, when she was denied employment at the Venice plant. The Trial Examiner's findings, that the Respondents' actions with respect to Roark were discriminatorily motivated,<sup>12</sup> are fully supported by the record, and our dissenting colleague does not appear to contend otherwise. Rather, he appears to rest his disagreement upon the propositions that Roark's termination was lawful because the termination of operations at the Los Angeles plant was lawful, and that the denial of employment at Venice was lawful because the type of employment which she requested was not available. However, the Trial Examiner did not find, as our dissenting colleague seems to assume, that the termination of Roark's employment at the Los Angeles plant was itself discriminatory; he found, rather, that discrimination occurred, at that time when Roark, for discriminatory reasons, was not offered a continuation of employment at the new plant. The Trial Examiner finds that Roark was one of a group of five employees that Fellman told Lewis he would like to have at the Venice plant if available, and that if he had not been adversely influenced by Lewis he would have made arrangements to take her to Venice. It is therefore not material to

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<sup>12</sup>We find it unnecessary, however, to rely on the Trial Examiner's reference to the Respondent's refusal to bargain concerning the transfer of the employees.



this finding of discrimination that the closing of the Los Angeles plant was not unlawfully motivated. With respect to the Respondent's further denial of employment to Roark at Venice, Fellman admitted that work was available for her on February 5, when she first applied; and, as found by the Trial Examiner, the Respondents failed to offer her employment on that date for discriminatory reasons. As the discrimination on that date occurred at a time when work was available, it is therefore of no consequence that work may not have been available 2 days later.

### Order

Upon the entire record in these cases, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, Jack Lewis and Joe Levitan, a copartnership doing business as California Footwear Company, its partners, agents, successors and assigns, and Trina Shoe Company, a corporation, its officers, agents, successors, and assigns (to the extent that it has acted or in the future may act on behalf of Respondent California Footwear Company or its partners, agents, successors, or assigns) shall:

1. Cease and desist from:

(a) Discouraging membership in the United Shoe Workers of America, Local 122, or any other labor organization of their employees, by terminating the employment of any of their employees dis-

criminatorily and by thereafter failing and refusing to reinstate them, or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of employment;

(b) Discharging or otherwise discriminating against any employee because he has filed charges or given testimony under the Act;

(c) Refusing to bargain collectively upon request with United Shoe Workers of America, Local 122, as the exclusive representative of all production employees employed at the Respondents' Venice (Los Angeles), California, plant, excluding executive, administrative, sales, clerical, and maintenance employees, truck drivers, guards, professional employees, and supervisors as defined in the Act, and

(d) In any other manner interfering with, restraining, or coercing their employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Shoe Workers of America, Local 122, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Shoe Workers of America, Local 122, as the exclusive representative of the employees in the above-described appropriate bargaining unit with respect to wages, rates of pay, hours of employment, or other conditions of employment;

(b) Offer to Eugene Piasek immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make Eugene Piasek and Blanche Roark whole for any loss of pay suffered as a result of the discrimination against them, in the manner set forth in the section of the Intermediate Report entitled "The remedy";

(c) Preserve and make available to the Board or its agents upon request, for examination and copying, all payrolls records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due and the rights of employment under the terms of this Order;

(d) Post at their Venice, California, plant, copies of the notice attached to the Intermediate Report as Appendix B.<sup>13</sup> Copies of said notice, to be

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<sup>13</sup>This notice shall be modified by substituting the words "A Decision and Order" for the words "The Recommendations of a Trial Examiner." In the event this Order is enforced by a decree of a United

furnished by the Regional Director for the Twenty-first Region (Los Angeles, California), shall, after having been duly signed by the authorized representative or representatives of the Respondents, be posted by Respondent California immediately upon receipt thereof and be maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent California to insure that said notices are not altered, defaced, or covered by any other material; and

(e) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply herewith.

It Is Hereby Further Ordered that except as otherwise found herein, the complaint in these cases be, and it hereby is, dismissed.

Dated, Washington, D. C., Oct. 31, 1955.

ABE MURDOCK,

Member,

IVAR H. PETERSON,

Member,

[Seal]

NATIONAL LABOR RELATIONS BOARD.

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States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

Philip Ray Rodgers, Acting Chairman, dissenting in part:

1. This case involves, *inter alia*, a question concerning the continuance of an employer's bargaining obligations where, for reasons having no connection with employee rights protected by the Act, the Employer removes his plant to a new location. I do not agree with my colleagues' resolution of the issues pertaining to this matter.

As is set forth in the Intermediate Report, the Respondent<sup>14</sup> and the Union were parties to a collective bargaining agreement covering employees at the Respondent's Los Angeles plant. The agreement was effective until September, 1953. In January, 1953, the Respondent closed the Los Angeles plant, and moved to a new plant, some 15 miles distant, in Venice, California. The record shows, and the Trial Examiner found, that the moving of the plant was prompted by personal and economic considerations, and not by any antiunion considerations.

When the Union learned that the Los Angeles plant was to be moved it talked with the Respondent about transferring the Los Angeles employees to the Venice plant. The Respondent, however, declined,

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<sup>14</sup>I agree with the conclusions of my colleagues and the Trial Examiner that Respondent Trina was the agent, or alter ego, of Respondent California; and that together they constituted a single employer within the Act's meaning. The term "Respondent" is used, in this opinion, to signify both Trina and California as a single entity.



asserting that the Venice plant would be under a management over which it lacked control. Subsequently, 3 weeks after the Venice plant had begun to operate, the Union notified the Respondent that the Los Angeles employees requested employment at Venice as jobs became available. The Union also took the position that its bargaining agreement with the Respondent covering employees at the Los Angeles plant continued in being and was applicable to employees at the Venice plant. The Union further asked that, without any reference to the Los Angeles agreement, the Respondent recognize it as the representative of the Venice employees. The Respondent agreed to this latter request, provided the Union could show that it represented a majority at that plant. Though it attempted to do so, the Union could not make such a showing. In fact, the Union never secured the support of a majority of the Venice employees.

Only three of the Los Angeles employees applied in person for employment at Venice. Of these, two were hired. The third, Roark, was not hired, but, as I indicate below, I do not think the failure to hire Roark was discriminatory. In addition, the Respondent itself offered jobs at Venice to two other Los Angeles employees, both of whom went to work there.

On these facts, my colleagues, in agreement with the Trial Examiner, hold that the Respondent violated Section 8 (a) (5) of the Act when it failed to discuss with the Union the transfer of employees

from Los Angeles to Venice. With this conclusion I agree. But my colleagues, in agreement with the Trial Examiner, further find that the Respondent violated Section 8 (a) (5) in each of the following particulars: By refusing to apply the bargaining agreement covering Los Angeles employees to the Venice plant; by establishing wages and working conditions for the Venice employees different from those in the Los Angeles agreement; and by refusing "to recognize" the Union as the representative of the Venice employees. With these latter conclusions, I cannot agree.

The problem of this case is not a new one for the Board. In the very recent, and very similar, Brown case,<sup>15</sup> (which I think is controlling here) the employer, because of economic considerations, and not to avoid collective bargaining or to discourage union membership, moved his North Carolina plant from Charlotte to Monroe. The Employer failed to give notice to the Union, the majority representative of the Charlotte employees, in advance of the move. The Board ruled that because of the considerations behind the move, the termination of the employment of the Charlotte employees and the failure to hire them at Monroe did not violate the Act. It held

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<sup>15</sup>Brown Truck and Trailer Manufacturing Company, Inc., 106 NLRB 999 (Panel decision by Members Houston and Peterson; Chairman Farmer disputed the Union's majority status, and therefore did not pass upon the other matters decided in the case). See also National Hardware Co., 55 NLRB 71.

further that the Employer's failure to discuss with the Union the movement of the plant in advance of the move, thus, failing to give the Union an opportunity to discuss the placement of the Charlotte employees in positions at Monroe, was a refusal to bargain within the Act's meaning. The Board specifically rejected both the Trial Examiner's finding that the Union was the statutory representative of the Monroe employees, and his derivative conclusion that the employer had violated Section 8 (a) (5) by not bargaining with the Union concerning those employees. With respect to this latter issue the Board said:<sup>16</sup>

It is perhaps possible that, if the Brown Company had fulfilled its obligation to bargain with the Union with respect to the location of the Charlotte plant employees at Monroe, an agreement may have been concluded resulting in the transfer of the employees in question. We cannot assume, however, that even if such agreement had been reached, Charlotte employees would have transferred to Monroe in numbers sufficient to constitute a majority of the employee complement at the Monroe plant. In the light of these circumstances and the lack of antiunion motivation behind the move to Monroe, we do not believe that we should attribute to the Union statutory representative status in

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<sup>16</sup>*Ibid.*, page 1002.

in the absence of affirmative evidence that a majority of the employees at the Monroe plant have, in fact, designated the Union as their bargaining representative.

The conclusions of the Trial Examiner and of my colleagues that the Respondent violated the Act by refusing to bargain with the Union after the movement of the Respondent's plant to Venice is predicated upon two premises. The first premise is that the Respondent's failure, in violation of the Act, to talk to the Union about transferring the Los Angeles employees to Venice rendered immaterial the fact that the Union never represented a majority of the employees at the Venice plant. The second premise is that the bargaining agreement covering the Los Angeles employees continued "in effect" at the Venice plant, thereby preventing the Respondent from modifying the terms of the agreement without first satisfying the procedural requirements of Section 8 (d).<sup>17</sup> Both these premises, in my opinion, are unsound.

The Trial Examiner rested his position upon the proposition that the Union's loss of majority "can

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<sup>17</sup>Section 8 (d) provides in pertinent part: "\* \* \* where there is in effect a collective bargaining contract \* \* \* the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification" gives, among other things, a written 60-day notice of the proposed termination or modification.

be directly traced" to the Respondent's initial failure to talk about the transfer of employees from Los Angeles to Venice. This "direct tracing" of the loss, however, did not find its way into the Intermediate Report. My colleagues also say that the loss of majority was "directly attributable to the Respondent's unfair labor practices" (emphasis supplied). But my colleagues cite in this connection only one unfair labor practice—the failure to talk about the transfer of employees. They allude loosely to the fact that Respondent Trina was the alter ego of Respondent California, and they say that Trina was a "false front" for California, and that California played false with the Union and its employees by not disclosing it was running the Venice plant, but, significantly, they do not say that these acts were unfair labor practices. The truth, of course, is that they were not.

Nor do my colleagues explain satisfactorily why in this case they would put the burden "upon the Respondents to disentangle the consequences of their lawful conduct from the consequences of their unlawful conduct," whereas the Board imposed no such burden on the employer in the Brown case. It is no explanation to say, as do my colleagues, that the refusal to talk about the transfer of employees in the Brown case was motivated by an erroneous belief as to the extent of the obligation to bargain under the Act, or that there was lacking in the Brown case the element of a plan to escape the Union by subterfuge in the course of the move. For



the plain language of the Board's Decision in the Brown case declared that:

The Brown Company's agents [on June 18, 1952], deliberately created the impression that the Company was about to abandon its box plant operations completely. They acted similarly on August 7, 1952, when the Union explicitly renewed its bargaining request.<sup>18</sup>

Moreover the population and the distance figures cited by my colleagues as distinguishing characteristics are completely without significance. Surely my colleagues do not mean to proclaim that more people prefer to wend their perilous way through 15 miles of an involved and hectic metropolitan area, such as Los Angeles, rather than travel 30 miles on an open highway as in the Brown case. In short, my colleagues, without the "affirmative evidence" that the Board required in the Brown case, are making the precise assumption that the Board refused to make in that case. It seems to me therefore that my colleagues are either overruling the Brown case, or are now limiting the rule of that case to employers in North Carolina and are establishing a different rule for employers in California.

So far as Section 8 (d) is concerned, my colleagues advance no plausible explanation as to why the bargaining agreement covering the Los Angeles employees remained "in effect" at the Venice plant. The agreement itself forms no basis for such a re-

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<sup>18</sup>Brown Truck and Trailer Manufacturing Company, Inc., *supra*, p. 1001.

sult, its terms being silent on the matter of the contract's continuance after the removal of the plant. There is neither Board nor Court precedent for such a construction of the words "in effect" in Section 8 (d). Indeed, what authority there is on the subject—the Board's own contract bar doctrine and the Brown case, cited above—clearly suggests that in the circumstances of this case the Los Angeles contract was not "in effect" at the Venice plant.<sup>19</sup> To find that the contract was "in effect," my colleagues have recognized the need to reconcile the realities of this case with Board precedent pertaining to the contract bar doctrine. To do so, they again resort to a fiction. This time the transfer to Venice of a "substantial number" of employees is assumed. But whether expressed in terms of the transfer of a majority of the Union supporters, or a substantial number of employees, the fact remains that the majority's position rests not upon a fact but only upon a very questionable assumption.

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<sup>19</sup>See *Clarostat Manufacturing Co., Inc.*, 88 NLRB 723. In that case, the Employer closed its plant in New York City, established a new plant in New Hampshire, and hired a new complement of employees. The Board specifically rejected the argument that a bargaining contract covering the New York employees barred an election at the New Hampshire plant. See also *Sylvania Electric Products, Inc.*, 87 NLRB 597.

The legislative history of the 1947 amendments to the Act shows a specific sanctioning of the Board's contract bar rules as dictating the dismissal of petitions when valid contracts are "in effect." Sen. Rep. No. 105, 80th Cong., 1st Sess. 25; H. R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 50.

This is not a case in which an employer, impelled in whole or in part by antiunion considerations, moves its plant in order either to thwart its employees' organizational activities, or to avoid collective bargaining, or to gain release from the terms of an existing bargaining contract. We cannot therefore impose liability on the Respondent upon any such premise.<sup>20</sup> On the contrary, this is a case where the movement of the Respondent's plant resulted from economic and personal considerations. Because it was thus motivated, the Respondent could, and did, terminate its Los Angeles operations without violating the Act.<sup>21</sup> If we accept the fact that the Respondent could do this—and it is most significant that the General Counsel made no claim, the Trial Examiner made no finding, and my colleagues do not now assert, that the Respondent could not—then I think the Board is impelled to conclude that the Respondent's bargaining obligation with respect to the Union terminated when it abandoned its Los Angeles operations. Accordingly, I would dismiss the complaint insofar as it alleges that the Respondent refused to bargain with the Union after the move had been made.

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<sup>20</sup>See, for example, *N.L.R.B. v. Somerset Classics, Inc.*, 193 F. 2d 613 (C.A. 2), cert. denied 344 U.S. 816; *N.L.R.B. v. E. C. Brown Co.*, 184 F. 2d 829 (C.A. 2); *Tennessee-Carolina Transportation, Inc.*, 108 NLRB 1369; *Jones Manufacturing Company*, 104 NLRB 117, 121; *Rome Products Company*, 77 NLRB 1217, 1219-1220.

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<sup>21</sup>See *Bickford Shoe, Inc.*, 109 NLRB 1346, at p. 1347.

2. Contrary to my colleagues and the Trial Examiner, I would not find that the Respondent discriminated against Blanche Roark. The Trial Examiner concluded that because the Respondent did not offer Roark a job at the Venice plant before the Los Angeles plant closed down, and because the Respondent did not discuss with the Union the transfer of employees to the Venice plant, Roark was "an object of discrimination at the end of her employment" at the Los Angeles plant. In my opinion, these conclusions are wholly unwarranted. The Trial Examiner, as previously pointed out, found that the Los Angeles plant was closed down because of economic and personal reasons and not because of antiunion reasons. And though all the employees at Los Angeles were released when the plant closed down, the Trial Examiner made the finding that only the release of Roark was discriminatory. This conclusion with respect to Roark is clearly inconsistent with his prior finding that the closing of the Los Angeles plant was not illegally motivated and that presumably the termination of the other employees were lawful.

Neither do I perceive how the Respondent's failure to discuss the transfer of its employees to Venice establishes that the Respondent discriminated against Roark. Such a conclusion is even more untenable than the conclusion, already adverted to, that the failure to discuss that transfer demonstrates the Respondent's responsibility for the Union's lack of majority support at the Venice plant.



The Trial Examiner also concluded that the Respondent rejected Roarks' application for employment at the Venice plant because of her union membership and activity. With this conclusion I also disagree. The crucial issue with respect to this latter point is whether there was a job available when she personally applied for employment on February 5 and 7, 1953. It is the Respondent's position that there was no job available.

Roark had been in the Respondent's employ from 1950 until the Los Angeles plant shut down in January, 1953. During her first year, Roark had been a sock stitcher; thereafter, she had worked as a platform stitcher. There is no showing that Fellman, who was in charge of the Venice operation, and to whom Roark applied for employment in February, 1953, knew that Roark had ever worked for the Respondent as a sock stitcher. Fellman testified without contradiction that Roark applied for work as a platform stitcher. The Intermediate Report shows that at the time of Roark's application the Venice plant had need for only one full-time platform stitcher. On February 5, two employees, Oster and Murray, were dividing the platform stitching work. By February 7, the platform stitching work had been assigned exclusively to Oster. It is thus clear that for Roark to have been employed as a platform stitcher, the Respondent would have had to displace either Oster or Murray, or both of them.

The Trial Examiner does not find otherwise. He, however, viewed with skepticism the Respondent's



testimony that Oster became so proficient at platform stitching that it would not have been feasible to switch him to sock stitching. This completely ignores the Respondent's position that in order to have employed Roark, he would have had to demote Oster to another job where he would suffer reduced earnings. This the Respondent would not do. Certainly the law does not require the Respondent, in order to avoid a charge of antiunion discrimination, to transfer incumbent employees to less favorable positions in order to accommodate prounion applicants. It seems to me that the Respondent's position in this regard was both reasonable and sound. The Board has no right to substitute its concept of business management for that of the employer.

This statute places the burden of proving discrimination upon the General Counsel; it does not require the Respondent to prove nondiscrimination. Because of the facts discussed above, and because it is not established by the record that platform stitching work was otherwise available, I do not believe the General Counsel has sustained the burden of proving that Roark was discriminatorily denied employment at the time of her application.

Dated, Washington, D. C. Oct. 31, 1955.

PHILIP RAY RODGERS,  
Acting Chairman,

NATIONAL LABOR RELATIONS BOARD.

Before the National Labor Relations Board

Case No. 21—CA—1659, 21—CA—1658

In the Matter of:

JACK LEWIS AND JOE LEVITAN, d/b/a CAL-  
IFORNIA FOOTWEAR COMPANY ET AL.,

and

UNITED SHOE WORKERS OF AMERICA,  
LOCAL 122.

Tuesday, October 13, 1953

Pursuant to notice, the above-entitled matter  
came on for hearing at 10:00 o'clock, a.m.

Before: William E. Spencer, Trial Examiner.

Appearances:

JEROME SMITH,

General Counsel, National Labor Relations  
Board.

RICHARD A. PERKINS,

Appearing on Behalf of the Company.

MILTON S. TYRE,

Appearing on Behalf of United Shoe  
Workers of America, Local 122.

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Mr. Perkins: In order to complete the plead-  
ings, may I propose a stipulation that the Answer  
of Respondents Trina and California Footwear to

the Original Complaint stands as an answer to the Amended Complaint and to the Amendment thereto without further pleading subject to this qualification that Mr. Smith points out to me there may be a new paragraph number as a result of the First Amendment and we will have to check that to make sure, but, in essence, the defense would be the same and the respondent's position the same. We haven't the retyping available for the new Answers.

Mr. Smith: I have no objection to that with that qualification. I do understand counsel to have said the [10\*] certification as alleged is conceded by California?

Mr. Perkins: Yes.

Mr. Smith: I have no objection to that procedure.

\* \* \*

Mr. Smith: Before we go off the record, it would assist the general counsel in his case, and perhaps be relevant to the very problem we are talking about, if we could have a stipulation at this time in relation to the interstate commerce activities of the company.

I propose a stipulation that during the last ten months—or stating it differently, during the first ten months of the calendar year 1953, Trina manufactured and delivered to California, and thereafter California shipped directly in interstate commerce to points outside the State of California, shoes of a value in excess of \$50,000.00.

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Mr. Perkins: That is satisfactory. [38]

\* \* \*

Mr. Perkins: Then here is a textual statement which I believe we can agree to, subject to reservation that I have made.

For the period since January 3, 1953, Trina has paid all payroll and all payroll taxes on its employees. All production employees are carried on Trina's payroll records. California's payroll records show no production employees, that is, for the period since January 3, 1953. I take back the statement to the effect that California's payroll shows no production employees since January 3rd, '53. They do not show, those records do not show any production employees during March, 1953, the month in which General Counsel's Exhibits for identification 8 and 9 fall.

Trial Examiner Hemingway: Do I understand that you are just limiting it to the one month of March?

Mr. Perkins: As to the statement that California had no production employees and formerly had some employees after [52] January 3, '53, and down to a date which I don't now have. During the same period, that is, since January 3, '53, California paid directly for the account of Trina nearly all of the invoices for materials, supplies, and other expenses except payroll, payroll taxes, personal property taxes and insurance pertaining to the operations of Trina. Nearly all of said items, that is, all said items except the exceptions mentioned, were billed

to California. Certain invoices including personal property tax bills and insurance were rendered directly to and paid by Trina.

A policy of insurance on Trina's equipment provides that any loss shall be payable to Trina or to California mortgagee as their interests appear. California has advanced to Trina from January 10, 1953, to the present date, at approximately weekly intervals, sums of money totaling as of September 30, 1953, \$43,750.00. Trina has received no money from California other than such advances.

Trina made a few miscellaneous sales of leather and bindings to persons other than California. With the exception of proceeds from such sales, Trina has received no money since January 3, 1953, from any source other than California.

Trina's book bank balance during the month terminations from February through September, 1953, varied from a high of \$217.27 credit, to a low of \$203.10 overdrawn. The bank account of Trina never was actually overdrawn. The book overdrafts are accounted for by the filling out of checks during one accounting [53] period which checks were not actually issued until after a deposit was made.

Purchases made and expenses incurred by California for Trina are evidenced by invoices. Similarly, finished shoes sold by Trina to California are covered by invoices.

In its bookkeeping practices, California keeps separately (a) a record of advances to Trina, (b) a record of purchases made and expenses incurred



for Trina, and (c) a record of purchases of finished shoes from Trina.

A balance on these accounts is struck periodically, for example, on August 31, 1953, entries were made in California's books to show that as of that date a debt from California to Trina of \$52,396.23 was offset by prior California purchases and expenses for Trina in the sum of \$24,983.16 and by prior California advances to Trina in the sum of \$27,413.07. This offset left Trina with nothing owing on the purchases expenses account, but with the sum of \$11,075.20 due California under the advances account. Trina has made no payments to California toward either the purchases, expenses account, or the advance account, except in the offset manner heretofore stated.

Since January 3, 1953, Trina has sold its entire production of shoes to California and California has purchased shoes from no supplier other than Trina. As previously stated, Trina has, since January 3, 1953, made a few miscellaneous sales of leather and bindings to persons other than California. [54]

Is that O.K. so far, Mr. Smith?

Mr. Smith: Yes.

In connection with this stipulation, I propose the entry into evidence of General Counsel's Exhibit No. 3 with the stipulation that, as it covers the Month of August, 1953, it is generally illustrative of the status of advances and expenditures for the various other months between January of 1953, and the current date.

Mr. Perkins: We accept that as a correct statement to furnish foundation for the admission of the exhibit, subject only to our objection to materiality and subject to our possibly checking this and furnishing any other or different information which we may find.

We would agree, though, that the exhibit which we have here may be received as a prima facie evidence of the information which it contains and unless we do furnish other information on the subject, that it may be taken as facts therein stated.

Mr. Smith: Might we have an agreement that any such evidence be submitted before the close of general counsel's case, or by Thursday of this week, whichever is later?

Mr. Perkins: Yes.

Trial Examiner Hemingway: All right. General Counsel's Exhibit 3 is received in evidence. [55]

\* \* \*

Mr. Smith: I now propose the introduction into evidence of General Counsel's Exhibits 8 and 9 by stipulation, with the following explanation and understanding that Exhibit 8 purports to be a list of all employees of Trina on March 24, 1953, to fall within the unit set out in paragraph 6 of the amended consolidated complaint, and that General Counsel's Exhibit No. 9 purports to be a similar list of all the employees of Trina on March 31, 1953, who fall within the unit set out in paragraph 6 of the amended consolidated complaint. In addition to this stipulation, I propose the stipulation that the

employee, Albert Lewis of Trina is and has been at all times, that he has enjoyed employee status at Trina as supervisor as that term is defined in Section 2, Subsection 11 of the National Labor Relations Act, as amended.

Trial Examiner Hemingway: You joining in that stipulation?

Mr. Perkins: Yes, that is satisfactory. That is, primarily that the Albert Lewis employee status in terms of exclusion from the production employee unit, because we don't contend that he does come in. As far as the stipulation for other purposes, that he is a supervisor, we want to reserve on that. But if this is for the purpose of establishing a production unit, I will go along with that.

Trial Examiner Hemingway: You mean he would be a supervisor for some purposes, but not for others?

Mr. Perkins: No, I am trying to agree with general counsel [60] on the list of employees on these days. That will do. [61]

\* \* \*

### MAURICE FELLMAN

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Trial Examiner Hemingway: State your full name, please.

The Witness: Maurice Fellman. [73]

Trial Examiner Hemingway: F-e-l-l-m-a-n?

The Witness: Yes.

(Testimony of Maurice Fellman.)

Trial Examiner Hemingway: Your home address?

The Witness: 3rd and Ashland, Santa Monica, California.

Direct Examination

By Mr. Smith:

Q. Will you state your position or occupation at the present time?

A. President of Trina Shoe Company.

Q. Apart from your office in the company, what has been your position or function with respect to the company in the past several months?

A. General Manager.

Q. And from what date have you held that position of General Manager of Trina Shoe Company at the Venice location of the company?

A. Since the latter part of December.

Q. That is, of 1952; is that correct?

A. That is right.

Q. And from the latter part of December up to the present time, have you devoted full time to the job of General Manager of Trina Shoe Company?

A. Yes.

Q. And has your position or function with the company changed in any material respect in that 10-month period?      A. No.

Q. Have you ever been an employee of California Footwear? [74]      A. Yes.

Q. And were you an employee of that company while it was located at the Los Angeles address?

(Testimony of Maurice Fellman.)

A. Yes.

Q. From what date—strike that.

During what dates, what period of time were you employed by California Footwear?

A. October 1, approximately, up to the time that Trina moved to Venice.

Trial Examiner Hemingway: October 1, 1952?

Q. (By Mr. Smith): Until late December, 1952? A. That is right.

Q. Who employed you at California Footwear?

A. By name?

Q. Yes, what individual? A. Jack Lewis.

Q. In the three months, roughly, that you were employed at California Footwear, did your duties remain approximately the same? A. Yes.

Q. What was your job there?

A. Pattern making.

Q. Did you have any other duties?

A. Not duties, no.

Q. Did you perform any other function in connection with the [75] California Footwear Plant?

A. No, prime function, no.

Q. Upon what basis were you paid, and how much?

\* \* \*

A. \$80.00 per week.

Q. With whom did you arrange that salary?

A. Jack Lewis and Joe Levitan. [76]

\* \* \*

Q. (By Mr. Smith): Now, you say that you



(Testimony of Maurice Fellman.)

left your employment at California and went to Trina at a date in about late December; is that correct?      A. Yes.

Q. I would like to have you tell me, if you will, what events led to that change in your work and employment. Specifically, now, when did you first have a conversation with either Mr. Lewis or Mr. Levitan concerning such a move and change in your occupation?      A. How specific?

Q. Give us your best recollection.

A. I would say it was in December. [77]

\* \* \*

Q. (By Mr. Smith): I think you said you were the one who brought it up. The question was, what was your proposal, if you made one?

A. My proposal was a general one, that Trina Shoe Company manufacture and sell to California Footwear.

Q. At this time did you make any proposal as to where your manufacturing operations would take place?      A. Originally, I don't believe I did.

Q. Do you recall when the subject matter of where your manufacturing operations would take place first came up?

A. I would say that it would be a week preceding the move.

Q. And your move was at what date, by your best recollection now?

A. The latter part of December.

Q. So about a week prior to the latter part of

(Testimony of Maurice Fellman.)

December the subject of where you were going to move came up. Did that come up at your instance or at the instance of one of the partners?

A. The proposal to move to Venice?

Q. Yes. [80]

A. I would say at the instance of the partners.

\* \* \*

Q. (By Mr. Smith): At the time that the subject matter of the move to Venice came up, what was said about the move to Venice, and by whom?

A. I don't recall who said it. I was asked if I would move the company from Costa Mesa to Venice.

Q. Is it correct that in the period from October 1 to late December, the Costa Mesa operations were completely shut down?

A. I had no employees during that period.

Q. And there was no production going on during that period in Costa Mesa?

A. I did at little piddling myself. [81]

\* \* \*

Q. (By Mr. Smith): And I take it that oral agreement was reached in late December?

A. Yes.

Q. And that was then reduced to writing in the buy and sell agreement that has already been introduced into evidence in this case? A. Yes.

Q. Now, in these discussions, was there any dis- from your corporation?

(Testimony of Maurice Fellman.)

A. No, I don't believe there was. [82]

\* \* \*

Q. What is your salary at Trina?

\* \* \*

The Witness: \$80.00 per week. [83]

\* \* \*

Q. (By Mr. Smith): Your answer is that without thinking much about it, you continued on your old salary from California?

A. That is correct.

Q. You were satisfied with the \$80.00 and decided to continue to pay yourself the same figure, is that correct? A. That is correct. [84]

\* \* \*

Q. Was Albert Lewis one of the first employees?

\* \* \*

The Witness: One of the first. [85]

\* \* \*

Q. (By Mr. Smith): I withdraw the last pending question and ask you what Albert Lewis' job was with Trina at Venice?

A. Principally in the supervisory capacity. [86]

\* \* \*

Q. (By Mr. Smith): I will ask you whether or not at any time later than the original salary, his salary was increased?

\* \* \*

The Witness: Yes, he got an increase.

(Testimony of Maurice Fellman.)

Q. (By Mr. Smith): I ask you whether, at any time, he draws more salary than you?

A. Yes, he does. [92]

\* \* \*

Q. (By Mr. Smith): \* \* \* When did you or Albert Lewis first conduct interviews for hire at the new plant? A. Probably December.

Q. Who did the hiring? A. Myself.

Q. Did you do all of the hiring in the first few weeks of the company? A. Yes. [93]

\* \* \*

Q. (By Mr. Smith): We have received into evidence a lease that goes to the property in Venice which Trina sublet from California. Now, just to lead up to my next question, I hand you General Counsel's Exhibit 5 and ask you whether the description of the property leased as contained in that lease conforms with the actual practice through the months that the lease was in operation? In other words, did you use and possess the actual premises set out in the sublease, which I have handed to you?

A. I believe we did, in general. [94]

\* \* \*

Q. (By Mr. Smith): I call your attention to the attachment of General Counsel's 5, which is the sublease, and the clause on the last page of the exhibit, which reads, "The front storeroom, the rear office room, and the front office room. Lessee shall have the joint use of the front office room with lessor and shall have the right to use the pedestrian

(Testimony of Maurice Fellman.)

and vehicular entrances on Main Street for its business operations.”

I will ask you now, is that a correct description of the actual provision that has prevailed in the last several months between the two possessions of the two companies?           A. Yes.

Q. In the period from January 1, until the present time, I will ask you whether Joe Levitan has spent four work days as a regular thing at the premises now, without distinguishing between [96] what part of this building, has he put a full appearance in each work day at the premises described in the sublease?

Mr. Perkins: I object to the question.

\* \* \*

The Witness: Yes. [97]

\* \* \*

Q. (By Mr. Smith): Do you understand the question? What portion of Mr. Levitan's time was spent within Trina premises?

A. There was one area in the shop that by right of lease belongs to Trina, but it is one that we don't draw lines over, and [99] it is the area in which Joe Levitan spends a greater portion of his time.

Q. What is that area?

A. That area is the supply house and the packing house.

Q. And he spends the greater portion of his time there?           A. I would say so.

Q. Now, he also spends time throughout the factory, does he not?           A. Yes.



(Testimony of Maurice Fellman.)

Q. On a regular basis, does he not?

A. I couldn't say regular.

Q. I will ask you whether he directs the work of employees in the factory, production employees?

A. He gets his finger into everything.

Trial Examiner Hemingway: Including direction of employees?

The Witness: He is liable to.

Q. (By Mr. Smith): I will ask you what Mr. Levitan's job was at the California plant in the three months that you worked there, if you know?

A. He was, I would say, he was a production man there.

Q. He was in charge of production and Mr. Lewis' job was a larger one in charge of all operations. Wouldn't that be the division between this work at the old plant?

A. From my observation, yes. [100]

\* \* \*

Q. (By Mr. Smith): You seem a little bit puzzled when I asked you about hiring, what function did Mr. Levitan have in hiring—

\* \* \*

Trial Examiner Hemingway: I didn't understand Mr. Smith to be censuring the witness on that. I think it was just that Mr. Smith may not have made himself plain and the witness may have had some doubt as to what he was called upon to answer. I did notice that you questioned the manner in which Mr. Smith had phrased the question,

(Testimony of Maurice Fellman.)

as though, if he had put it in the right way, you might have said Mr. Levitan had something to do with it.

The Witness: That is correct.

Trial Examiner Hemingway: Did he have something to do with employment?

The Witness: I would say that there have been times when either I was absent or preoccupied and people had come in that Mr. Levitan had put them to work. That would be in instances when I had made it known, say, that I was looking for a person to employ.

Q. (By Mr. Smith): In such cases Mr. Levitan put such employees [103] to work without consulting you?

A. It might have been done even before I was consulted about the specific individual, yes. [104]

\* \* \*

Q. (By Mr. Smith): You testified, Mr. Fellman, that your job at California Plant was that of sample maker? A. That is correct.

Q. And you had no other substantial duty?

A. That is correct.

Q. I will ask you whether you didn't make the samples at Trina during most of your employment there? A. Yes.

Q. I will ask you whether or not you were the only sample maker there during that period?

A. That is 99 per cent true, but there were some other patterns made. [113]

(Testimony of Maurice Fellman.)

Trial Examiner Hemingway: I didn't get the period. What period was this?

Mr. Smith: The period I refer to is the entire period from January 1st until the present date.

Q. (By Mr. Smith): In that period, is it your testimony you made 99 per cent of the patterns?

A. That is correct. [114]

\* \* \*

Trial Examiner Hemingway: I would like an explanation of how you happen to be an employee of both companies at the same time.

The Witness: Trina Shoe is a corporation of which I am the sole owner. At that time I was idle. So I went to work at California Footwear, making the patterns, which in itself is not a full-time job, just is a spot job, I would say.

Trial Examiner Hemingway: And that was your occupation between October and December of 1952?

The Witness: Yes. [116]

\* \* \*

Q. (By Mr. Smith): I would like to go into more detail concerning your actual work at Trina. You said you made all the patterns or 99 per cent thereof. Did you sign the payroll checks?

A. Yes.

Q. What else did you do at Trina? [118]

A. Everything that comes under the term of general managership. [119]

\* \* \*

form operations? [120]

\* \* \*

The Witness: Well, you see, I can think of instances in a broad sense where we might have had discussions on how a certain thing, how a certain operation, is performed with the operator on the specific job enmeshed in the discussion.

Whether a thing like that would be direction as you are asking it, I don't know.

Q. (By Mr. Smith): You are talking about a discussion, are you not, occurring at the machine site between you and Mr. Lewis and the operator of the machine?

A. Yes.

Q. And that kind of discussion did occur?

A. Yes.

(Testimony of Maurice Fellman.)

Q. And what do you mean by your answer you wouldn't know about Jack Lewis' activity in the plant?

A. Jack Lewis didn't spend a great deal of time in the plant.

Q. I will ask you the time that he did spend in the plant, did he direct individuals in the work that they were performing?

A. I don't recall an instance of direction, unless you define direction a little more narrowly.

Q. Did he tell individuals what to do?

A. I wouldn't know. Possibly how to do it, I mean it's a very narrow road.

Q. Did he instruct individuals on how to per-

(Testimony of Maurice Fellman.)

Q. Who took charge of the plant on days that you were away from the plant for the entire day?

A. Who would be responsible for what phases?

Q. Well, if there were several, tell me their names and what their individual responsibility was.

A. That could have varied. I would say that there might have been times when I asked Levitan to watch out for certain phases.

Trial Examiner Hemingway: Don't say "might have been" if you asked him to do that. [121]

The Witness: Let's put it this way, I know there have been times I did that and the specific times I can't bring to mind.

Q. (By Mr. Smith): They refer to days that you were absent for a full day? A. Yes.

Q. And you asked Levitan to watch out for certain things on such days? A. Yes.

Q. And you asked him to watch out for production on such days, is that right? A. Yes.

Q. And did you have anyone else take charge of any portion of your duties while you have been away?

A. Now, people on the Trina payroll?

Q. I am referring to Trina employees or California employees if that be the case.

A. Well, in that case, there would be a lot of individuals throughout the shop that were given specific instructions to watch over things in their immediate vicinity.

Q. Have you ever asked Albert Lewis to take charge of the plant or some portion of the job while



(Testimony of Maurice Fellman.)

you have been away?           A. Yes.

Q. Have you ever asked Jack Lewis a similar question?           A. Yes. [122]

\* \* \*

Q. (By Mr. Smith): Who makes the determination that a certain job carries a certain rate of pay?           A. I do.

Q. And do you make that determination in all cases?           A. Yes.

Q. In every case throughout the ten months' period have you determined what piece rate a certain employee is to draw for a certain operation?

A. Yes.

Q. Now, with respect to increases in rates of pay, if an hourly paid employee makes a request for a wage increase, to whom does the employee normally make application, to you or someone else?

A. To myself.

Q. And do you make an effective decision about that immediately, or do you make further determination?

A. Do I ponder it? No, I don't make immediate decision in every case.

Q. What do you do?           A. Ponder it.

Q. Do you also consult with Mr. Jack Lewis? [123]

\* \* \*

A. I don't consult him as to whether the person should get it, if that is what you are talking about, if that is the question.

(Testimony of Maurice Fellman.)

Q. Why do you consult him in such cases?

A. I might consult with Mr. Lewis or with other parties for the purpose of determining a rate.

\* \* \*

Q. I will ask you when you are asked questions about work by an employee about the way to do a job or some question about materials, have there been occasions when you said, "Go ask Joe," [124] or "Go ask Jack," and have not answered the question put to you?

A. I would have to hear the question. There might be an instance where the question might involve the product that I was making for California Footwear, and might entail whether or not the product would carry the material that they required. In that instance it could happen.

Q. There have been cases you said "Go ask Joe," or "Ask Jack"?           A. Yes. [125]

\* \* \*

Q. Who determines the amount of pay that piece rate work—strike that.

Who determines the full paycheck payment to piece-rate workers by counting up the tickets and deciding how much is due for that work?

A. The girl in the office.

Q. Do you ever do that?

A. I have done it.

Q. Does Jack Lewis ever do that?

A. There have been times when he has done it.

(Testimony of Maurice Fellman.)

Q. Is it your testimony it is ordinarily the girl in the office who does it?

A. Ordinarily, ordinarily it is myself who does it.

Q. Does Trina have a telephone book listing at 222 Main Street?           A. No.

Q. I take it your answer is that no phone is listed in Trina's name in any directory?

A. That is correct.

Q. And you have not an unlisted phone?

A. That is correct.

Q. Is there a phone listed for that address?

A. No, oh, yes, there is a phone listed for that address. [126]

Q. Is that in the name of California Footwear Company?           A. Yes. [127]

\* \* \*

Mr. Smith: I would like to read it in. The listing which appears at page 1535 of the directory as identified, is as follows: In bold-faced letters, "Calif. Footwear Co," California is abbreviated, as C-a-l-i-f. Manufacturers, which is abbreviated. "Mfrs. of Slippers, Sandals and Casuals." That is "222 Main, Venice." Venice is abbreviated and following a series of dots is the telephone number, Exbrook 6-5951.

I do not have before me the August, 1952, Los Angeles yellow page directory, but counsel's comment indicates it may be material and at a later point in the record I would like to introduce, to

(Testimony of Maurice Fellman.)

ask the Trial Examiner to take official notice of the entry there which carries the name of the California Footwear Company at the former location, but with a different descriptive comment that is unlike the comment here as to what the company is engaged in at that former location which, I think, is clear evidence that this is not an inadvertent carry-over from a former listing.

Trial Examiner Hemingway: Is it stipulated his reading is correct?

Mr. Perkins: Well, that is no objection that it is correct. [128]

\* \* \*

Q. (By Mr. Smith): Confining your next answer or two to your job during the last two weeks, have you worked full days during the last two weeks at the Venice Plant?

A. I haven't put in full time at the plant.

Q. What portion of your time in the last two weeks have you spent at the Venice plant?

A. The last two weeks, perhaps forty, fifty per cent.

Q. Forty or fifty per cent? A. Yes.

Q. How many days in that period were you away from the plant for a whole day or almost a whole day? A. I would say five days.

Q. During those five days who was in charge of production at the plant?

A. As I say, various assignments were placed in general. Albert Lewis was in charge during that period.

(Testimony of Maurice Fellman.)

Q. And was Joe Levitan in charge on any of those days? [129]            A. In a general sense.

\* \* \*

Q. Were any new employees taken on in your absence on any of those days?

A. There were some new ones, yes.

Q. Who did the hiring, if you know?

A. I don't.

Trial Examiner Hemingway: Had you specifically given authority to do any hiring during the time you were away? [130]

The Witness: Yes.

Trial Examiner Hemingway: To whom did you give that authority?

The Witness: To Joe and Albert, of course.

Trial Examiner Hemingway: Was there a standing arrangement for that, or did you specifically instruct them each time you left the plant?

The Witness: No, because in the main we were covered on help. But there were some minor jobs that would require some assistance.

Q. (By Mr. Smith): When you first went into the operation in January of 1953, what was the source of your machinery?

A. When I first went into operation in 1953?

Q. In January of 1953, at Venice, where did you get your machinery?

A. That is the machinery that was on the property at Costa Mesa.

Q. Who arranged for transportation for its moving?



(Testimony of Maurice Fellman.)

A. The actual arrangement of the moving?

Q. Who made the contract or agreement for its transportation, you or Mr. Lewis?

A. I think Mr. Lewis notified the trucking company. I'm not sure, because the trucking company is one that is used quite a bit in the trade.

Q. Was that billed to California and then, in turn, billed to you? [131]

A. Yes.

\* \* \*

Q. I will ask you whether machinery wasn't moved to Venice Plant from the California Footwear?

A. Yes, at a later date.

Q. When did that occur, in January?

A. No, I don't believe so. I believe it was later than that.

Q. Was it in February?

A. I think it was in February.

Q. Was that all the machinery located in the California plant when you left there in December? Was all of that moved over?

A. I don't know if it was all moved over.

Q. Well, was the greater part of it moved?

A. I believe the greater portion was moved, yes. [132]

\* \* \*

Q. (By Mr. Smith): This machinery that was rented, was that from United?

A. Some of it.

Q. And what was from United is now still leased by California at the present time, is that not true?

(Testimony of Maurice Fellman.)

A. That is true.

Q. And, in turn, you are billed for whatever that rental is in connection with the——

Trial Examiner Hemingway: Is that the United Shoe Machinery Company?

The Witness: Yes.

Q. (By Mr. Smith): Is another company also involved in the machinery rentals by California?

A. Yes. [133]

Q. And is it true that the sole dealing that either of your two companies have are dealings by California with that company?

A. On lease and rental equipment.

Q. On the rental equipment?

A. Yes, Trina Shoe Company does not lease any equipment.

Q. And then, in turn——

A. Except those payments to California Footwear for their lease equipment.

Q. You pay the precise amount of rental that you pay to California who has the lease arrangements with each of these two companies?

A. Yes.

Q. And those are lease arrangements that are continuations held at the Los Angeles location of California?

A. Yes. [134]

\* \* \*

Trial Examiner Hemingway: On the record.

Are you prepared to make your stipulation?

Mr. Smith: Yes, you go ahead, Mr. Perkins.

Mr. Perkins: Yes.

The following facts are stipulated to. I must say, I wasn't able to reach Mr. Fellman during the recess but I collected information elsewhere. If there is any mistake here, I will undertake to inform the Examiner and the government counsel promptly. This is based on the best information I can get. These are instances in which, I gather, the counsel for the government wants to show that the personnel practices at Trina Shoe Company differed from those which had formerly been in force with California under California's contract with the union.

First, the minimum hiring-in rate paid by Trina has been 75 cents an hour. Now, that doesn't mean that everybody was hired in by Trina at that figure. Some received more, but there were some who received as little as 75 cents an hour when hired in by Trina.

Trial Examiner Hemingway: Was that for inexperienced help?

Mr. Perkins: I gather so, yes.

The minimum hiring-in rate at California under labor [148] contract has been, I believe, 80 cents an hour. The 75 cents minimum hiring-in rate paid by Trina at Venice operation was the same minimum rate which had prevailed at Trina at Costa Mesa operation in 1952.

All right so far?

Mr. Smith: Yes, that is agreed to.

I just want to make this comment about the Costa Mesa rate. We stipulate to the fact, but take the position that any information within his stipu-

lation relating to Trina at Costa Mesa involving pay practices and working conditions is wholly immaterial in this action. With that comment, I agree to the stipulation.

Mr. Perkins: We will have an objection as to the materiality of the whole thing, probably.

Trial Examiner Hemingway: I will receive the stipulation.

Mr. Perkins: Now, next item under the labor contract enforced covering the operations of California Footwear, at least, toward the latter part of the operations of California Footwear there was added an amount of 13 cents an hour, termed a cost-of-living bonus to the wages of employees, including the piece-rate earnings of employees. That was a 13-cent flat increase added to piece-rate rate earnings.

Trial Examiner Hemingway: That was 13 cents to each employee, regardless of the category, not an average of 13 cents?

Mr. Perkins: It was to each employee and that was a [149] provision of the union contract covering California. Trina has not paid any such so-called cost-of-living bonus, in its operation at Venice. Neither did it pay any such amount in its operations at Costa Mesa.

Mr. Smith: That is agreeable with one or two corrections. The 10 cents was added in September of 1951 and the added 3 cents in October of 1952, rather than in a single lump sum.

Trial Examiner Hemingway: You will accept that?

Mr. Perkins: That is all right, if that is what it was.

If you are going to put in a copy of the old contract, why don't you——

Mr. Smith: Only in the most recent instances, I am not sure how much of this is clear in that contract.

Mr. Perkins: Trina never paid the dime nor the three cents, nor did it pay the 13 cents at Costa Mesa.

Mr. Smith: A second point, I may have misunderstood, but I understood this applied to piece-rate workers. The fact of the matter is it applied to piece-rate workers and hourly paid workers, but only those hourly paid workers receiving more than 95 cents per hour.

Mr. Perkins: Except Trina didn't pay the 13 cents, the 10 cents and the 3 cents, in any form.

Trial Examiner Hemingway: Something Mr. Smith said seems to alter the stipulation as I understood it. I thought the 13 cents was across-the-board to each and every employee, [150] regardless of what he was doing. Just now he said it was given to employees who received over 95 cents an hour. Does that modify it?

Mr. Smith: That is our understanding of what the practice was.

Mr. Perkins: You are talking about the union contract.

Mr. Smith: That's right. The practice under the contract.

Mr. Perkins: That wasn't——



Mr. Tutt: Could I explain?

Trial Examiner Hemingway: Why don't you talk this over off the record?

Off the record.

(Discussion off the record.)

Trial Examiner Hemingway: On the record.

Do you want to explain what was stated off-the-record, if you accept that as a part of your stipulation?

Mr. Perkins: The stipulation with reference to the 13 cents addition, 13 cents hourly addition, is modified so as to show that under the labor contract prevailing at California for the latter part of its operations, that was not paid to persons classified as apprentices.

Trial Examiner Hemingway: And were there apprentices who were receiving less than the 95 cents rate?

Mr. Perkins: I don't know. There's your experts.

Mr. Smith: No, we suggest the stipulation there were none. [151]

Mr. Perkins: That is acceptable.

Mr. Smith: The stipulation is agreeable in its present form.

Trial Examiner Hemingway: Are you through with that now?

Mr. Perkins: We have several other points.

Under the labor contract enforced in California's operations, employees of three months or more experience in the industry were to receive a minimum

of 95 cents. Under Trina's operations, that minimum wasn't paid for experience in the industry. It is our information that Trina did pay that much to anyone who was three months at Trina.

Mr. Smith: That is agreeable.

Mr. Perkins: Next, in Trina's operations in Venice, it did not pay reporting-in pay to persons who—and, say, to anyone unless he had been specifically instructed to report in and in all such cases it is our information that the employee was given at least a half-day's work. As to the practice formerly prevailing at California, I don't know that I could state that and I think it would—my suggestion would be that when you get the contract in, let it speak for itself.

Mr. Smith: That is agreeable.

Mr. Perkins: I want to add to that that Trina's practice in Venice was the same as it was in Costa Mesa.

Trial Examiner Hemingway: In this latter respect?

Mr. Perkins: Yes. [152]

Next item is that Trina did not pay time-and-a-half for daily overtime. That is to say, any time worked over 8 hours in one day, nor has it paid time-and-a-half for Saturday work, as such. That is to say, it hadn't paid time-and-a-half for Saturday, without regard to the time already worked during the week. As to holidays, Armistice Day was worked by Trina and has not been paid for, but will be paid for at straight time. I don't mean to say that what happened on Armistice Day is char-

acteristic of what is done on holidays, but, at any rate, that did exist and will exist with respect to Armistice Day. There have been other holidays which have not been worked by Trina.

Trial Examiner Hemingway: I assume that Armistice Day is not regarded as a holiday by Trina, is that correct?

Mr. Perkins: At least it hasn't been treated as such this year. I should say, by way of explanation, Mr. Examiner, in these smaller companies the personnel policies are not that regular or posted fashion of the kind you will find in larger companies. You will ask what the policy is and about all you can do, or they can do, is to tell you what they have done.

Trial Examiner Hemingway: Including any statement as to what Trina had done at Costa Mesa on that?

Mr. Perkins: I am unable to give that information. At any rate, at Costa Mesa, Trina wasn't under union contract and [153] had no obligation—excuse me. I will withdraw that. I can make a statement with respect to daily overtime and Saturday penalty time. Trina paid neither of those at Costa Mesa. I am unable to say what the holiday practice was. I assume since the employer wasn't under contract that required penalty time, it didn't pay it unless it wanted to for some reason. [154]

\* \* \*

Now, the vacation plan under the union contract prevailing at California Footwear is rather compli-

cated and I would suggest that the contract speak for itself when it is introduced. [156]

Mr. Smith: Agreeable.

Mr. Perkins: With respect to the practice at California Footwear.

The next item is that, at Venice, Trina has provided health and welfare benefits for employees, but not as part of the multiple employer plan enforced under the union contract which was applicable to California and in which, I believe, a number of other employers participated. Further, that the premiums, amount of premiums, paid by Trina were less in amount; that is, less per employee per applicable period than would have been payable under the union contract. [157]

\* \* \*

Mr. Perkins: We can cover July 4th, at least, and cover Decoration Day later on, as soon as I get the information.

I wish to restate our stipulation with respect to Trina's handling of Decoration Day and July 4th. It is agreed that what Trina did in 1953 with respect to July 4th, which was a day not worked, was to pay straight time for that day to persons who had then been on Trina's payroll three months or longer. The practice prevailing under the California Footwear contract will be shown by the contract when it is placed in evidence, as far as July 4th is concerned. We will, as soon as we get additional information, we will try to enter a further stipula-

tion with respect to what was done on Decoration Day, 1953.

Mr. Smith: That is agreeable.

Trial Examiner Hemingway: Does that complete your stipulation?

Mr. Perkins: Yes. [158]

\* \* \*

### JACK LEWIS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Trial Examiner Hemingway: Is that your full name, Jack Lewis?

The Witness: That's right, Jack Lewis.

\* \* \*

### Direct Examination

By Mr. Smith:

Q. I understand you are the Jack Lewis who is a co-partner in the California Footwear Company?

A. Yes, sir.

Q. It appears through the pleadings in this case that, at least at the time they were filed, this was an equal co-partnership between you and Mr. Joe Levitan?

A. That is right.

Q. I will ask you whether that is the situation which prevails today?

A. Yes, sir.

Q. I will ask you whether Mr. Albert Lewis, your son, has [161] any interest in the business?

A. No, sir.



(Testimony of Jack Lewis.)

Trial Examiner Hemingway: That is Albert Lewis?

Mr. Smith: Yes.

\* \* \*

Q. (By Mr. Smith): What was the monthly rental for California's premises in Los Angeles during the last year of your occupancy there?

A. \$288.00 a month.

\* \* \*

Q. (By Mr. Smith): Am I right in assuming you occupied all the premises you rented there, and did not sublease any part of those premises? [162]

A. Not in the last year, no. [163]

\* \* \*

### ERNEST TUTT

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Trial Examiner Hemingway: State your full name, please.

The Witness: Ernest Tutt.

Trial Examiner Hemingway: Your home address?

The Witness: 7822 LaSalle, Los Angeles 47.

### Direct Examination

By Mr. Smith:

Q. What is your job or occupation?

A. I am the organizer for the United Shoe

(Testimony of Ernest Tutt.)

Workers of America Affiliated with the Congress of Industrial Organizations. I am assigned to Local 122 at 617 Venice Boulevard, Los Angeles 15. [166]

\* \* \*

Q. Did you have any later conversation with Mr. Lewis about Mr. Fellman?

A. Sometime during the latter part of the year, which I believe was in December, I noticed that Mr. Fellman was no longer in the factory and I did go over to Mr. Lewis on one of my visits to the factory in December, during the month of December, and asked him why Mr. Fellman wasn't there any longer, that I hadn't noticed him around there recently. His answer to me was that he had to leave Mr. Fellman go because he wasn't doing his job properly.

Q. In the next month, that of January, 1953, did you make any trip to the Los Angeles plant of California?

A. Yes, during the first few weeks of January a number of the employees of California Footwear Company had mentioned to me that they heard that the shop was going to shut down and [172] that another shop was going to open up in Venice, California.

When a number of those rumors came to me, or statements came to me, I thought it might—I thought it my duty to go to Mr. Lewis and talk to him regarding the situation to see if there was any foundation to it that the shop was going to cease

(Testimony of Ernest Tutt.)

operations on Los Angeles Street. On January 20th I made a visit to the California Footwear Company and I told Mr. Lewis of the statements which had come to me from a number of workers, saying that the shop was going to shut down. I asked him if there was any truth to these statements.

He said, yes, the shop was going to shut down. He said he was going out of business. I asked him why such a decision was made. He told me that his doctor had told him that he had an incurable spinal disease and that his doctors told him further that he should definitely cease having anything to do with operating or running a shoe factory.

I told him, of course, that I was sorry to hear this. I went on and asked him if his decision, however, had anything to do with the union or the contract or anything at all connected with the union, and he said no, it didn't. He said it was strictly based on doctor's orders that he could no longer stand the strain and aggravation of operating and running a shoe factory.

I asked him where this factory in Venice was going to be located, as I had heard that a factory was opening up down there. [173]

He told me this factory was going to be owned and run by Mr. Fellman who had previously worked for him. I asked him for the address of the shop, which he readily gave me. He mentioned, I told him that I was anxious that as many of the employees of the California plant would be re-employed at Venice plant as was possible. He told me

(Testimony of Ernest Tutt.)

he had nothing to do whatsoever with the hiring or running of the Venice plant, and that I would have to see Mr. Fellman and talk to him about that.

I also asked him if he had any idea what Mr. Fellman's reactions might be towards continuing the new contract—recently signed contract.

He said, again, that he didn't, that I would have to talk to Mr. Fellman about that. Now, as I recall, that was the sum and substance of my conversation with him on that particular day. [174]

\* \* \*

Q. (By Mr. Smith): In the period that followed January 20th, did you have any occasion to visit the Venice site of Trina?

A. Yes, I did.

Q. When was your first such visit? [175]

A. My first visit, it was on January 27th.

Q. Who was present at that time?

A. I was accompanied by Mr. George Knapp.

Q. Identify him.

A. Business agent of Local 122, United Shoe Workers of America, C.I.O.

Q. Go ahead and tell us who was present at the conversation and what was said.

A. We went into the factory and observed Mr. Fellman in the shop. We went over and shook hands with him. We noticed, of course, the factory was just beginning to be set up. There was, I believe, three or four or five employees working there. We told Mr. Fellman that we were anxious to con-

(Testimony of Ernest Tutt.)

tinue the collective bargaining agreement that we had with the California Plant and we presented him with such a copy.

Q. You used the expression "we." Indicate who.      A. Mr. Knapp and myself.

Trial Examiner Hemingway: Who was speaking?

The Witness: I was speaking.

I presented him with a copy of the contract and he suggested that we come back a little later so that he could discuss the matter with us further. Whereupon, we left the shop.

Trial Examiner Hemingway: No date set?

The Witness: No.

Q. (By Mr. Smith): Did you make another visit to the Trina [176] plant, and if so, when?

A. Yes, in early February, on February 9th, to be exact, Mr. Knapp and I again visited the plant.

Q. Will you go ahead, what conversation took place, if any, who was present and what was said?

A. Again, we approached Mr. Fellman. I asked him if he had a chance to look over the contract provisions of the contract which I had left with him, and he said, yes, he had. He did ask us a few general questions about the agreement, such as rates of pay on the minimum wage and he brought up the question of the wage structure and he said you can see that things are still in a raw state at the moment in the shop and we are not producing many shoes. He asked what kind of provision, if any, could be worked out on the wage section in lieu of



(Testimony of Ernest Tutt.)

the piece rates which had been in effect on some of the jobs at the California plant.

I told him that the union had made agreements with other employers in this area which had provided for a temporary wage structure on agreed-upon hourly rates and that we would be agreeable to working out such a temporary wage structure with him as we had worked out with other manufacturers. He didn't say yes or no, but we pressed him for a definite answer as to when we would hear from him on his disposition towards our proposition that the contract be continued or be reinstated, whichever term or phrase you want to use. [177]

Now he did tell us——

Trial Examiner Hemingway: It isn't what we want to use, you state what you want to use.

The Witness: Well, we asked him, of course, pressed him for an answer as to whether he would be willing to continue or reinstate the California contract. He promised me that he would notify us by February 13th as to what his answer would be. So thereupon we left the factory.

Q. (By Mr. Smith): Did you hear from him in accordance with this statement?

A. No, we never heard any more from him at that time, on February 13th or thereafter.

Q. What was the date of your next meeting, if any, to the Venice plant?

Trial Examiner Hemingway: Excuse me, just one moment.

(Testimony of Ernest Tutt.)

Was it made plain to you how he was to notify you?

The Witness: Well, yes, it was. He was to call us, call me at our office. He had our phone number. As a matter of fact, we had already given him that information on our first visit to the shop in late January.

Q. (By Mr. Smith): What was the date of your next meeting or visit to the Venice plant?

A. Our next visit to the Venice plant, again Mr. Knapp accompanied me, was on March 18th.

Q. Go ahead, explain what conversation, if any, occurred; [178] who was present and what was said.

A. I might say by preface that prior to that meeting I had prepared a statement on union recognition which I intended to present to Mr. Fellman. We went down to the factory on March 18th and I presented him with this statement and asked him to sign it.

Q. I now hand you General Counsel's No. 14 for identification; and can you tell me what that is, if you know?

A. That is a statement, or a letter agreement, which we presented to Mr. Fellman and asked him to sign it.

Now, do you wish me to read this?

Q. No. Did he sign it?

A. He looked it over, read it quite carefully, of course, and he asked me the question, "Is it legal for me to sign this?" I said, "Yes, it is," and, "we

(Testimony of Ernest Tutt.)

wouldn't knowingly give you anything to sign which wasn't legal.'" So he said yes, he didn't see anything wrong with it. So he reached in his pocket, got a pen, and signed it Maurice Fellman, President of the Trina Shoe Company.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 14 for identification.)

Q. (By Mr. Smith): Will you go ahead and explain what else was said in this conversation, if anything?

A. After he signed it, then I told him that we would be in a position in the near future where we might be able to sit [179] down and negotiate a contract with him as soon as we could prove that we represented a majority of production employees. That was the conclusion of the meeting and we then left. [180]

\* \* \*

Q. (By Mr. Smith): Now, will you continue with what was said at the meeting on March 24th at the Trina plant?

A. At the meeting held on March 24th, I presented this letter to Mr. Fellman and with a list which was written in the letter and also which I had in my hand, a list of pledge cards and union dues cards. I believe there were 12 union pledge cards which had been signed by employees of Venice plant and five dues cards. We told him that, based

(Testimony of Ernest Tutt.)

upon the payroll which he had given me the previous day, we therefore had a majority of the employees signed up, either on union dues cards or pledge cards. [185]

\* \* \*

Q. Will you proceed and give us the details concerning General Counsel's 15-A, the 16 group and the 17 group, with respect to what you did with them, what was said with respect to them and other details in the meeting on March 24th?

A. I presented the letter dated March 24th to Mr. Fellman. He read the letter over. We then told him that I had the pledge cards and dues cards with me and that he could look them over to verify that they were the same names, individuals' names which appeared in the letter. He thumbed through the pledge cards and made no comments, and then he asked to see the dues cards and I gave him these five cards. He looked through them and he took one of the cards out.

Q. Can you identify which one that was?

A. He took a dues card out which belonged to Annie Bell Stamps.

Q. May we have the number of that particular card, that is the exhibit number I am referring to.

A. Annie Bell Stamps is 17-D.

Q. Will you continue, please?

A. He picked the card out and sort of waved it in his hand a [187] minute back and forth, and he said, "I will be back in a minute."

So he went into the factory from the office where I was talking to him, where Mr. Knapp and I were

(Testimony of Ernest Tutt.)

talking to him, and he returned in a couple of minutes and said, "I can't recognize this dues card." And I asked him why and he said, "She tells me that she's not a member of the union any more." I said, "Well, there is the card. She is still a member of the union. She has never withdrawn or quit, withdrawn or resigned from the union."

So, he said, "No," he didn't think he could recognize that card. I told him that he had agreed to recognize the dues cards and pledge cards which we had presented to him, but he kept stating that he could not recognize this one card.

Finally, I said, "Well, you're wrong in your assumption that she's not a member of the union, but," I said, "let's take this card out and confine ourselves to the other pledge cards and four dues cards remaining." He said, no, he said, "I feel that the other dues cards aren't legitimate, either."

I asked him which ones, in his opinion, were not legitimate, and he gave me no answer as to which ones, in his opinion, were not considered legitimate. So I asked him if he didn't intend to fill out the agreement which was made and which was signed by him the previous week. All I could get from him was the answer that he could not recognize the one dues [188] card and the other dues cards, generally.

So, with that, we left the office and the meeting was at an end. [189]

\* \* \*



(Testimony of Ernest Tutt.)

Q. What was the date of your next visit to Trina plant, if any?

A. The date of the next visit was March 31st. I was accompanied [202] to the plant at that time by Mr. Frank Roth.

Q. Will you go ahead and explain who was present at any conversation and what was said?

A. We went in the company office, Mr. Roth and I. I asked to see Mr. Fellman, who came in in a few moments and I told him that the union again had a majority, we thought we had a majority of employees who had signed pledge cards, only. At this time we were not going to go into the dues cards, but that we would rely solely on pledge cards.

I asked him to give me a list of his present employees, and I asked him how many people were on the working force. He answered and said 1624. I thought he was joking and I said, "Now, look, Mr. Fellman, we have the pledge cards here; in order to determine whether we represent the majority, we have got to have the list of employees on the payroll." So, again, he answered 1624. I reminded him that he had signed an agreement just a couple weeks prior to that time in which he stated that he would recognize the union as a bargaining agent if we could show that we represented the majority. I asked him if he wanted me to read that agreement to him. He said, no, he knew perfectly well what was in the agreement.

I asked him if he intended to live up to that agreement and carry it out. He answered and said,

(Testimony of Ernest Tutt.)

“No, I don’t like your antagonistic attitude when I met with you last week.”

I said, “Well, I didn’t like your attitude either, but [203] that is beside the point. We should try and carry it out, the agreement.”

He again refused to give me the list of employees. When it became apparent that he wasn’t going to co-operate, we left the meeting. That was the conclusion of it. [204]

\* \* \*

Q. Did you hold any subsequent meetings with Mr. Fellman?

A. In the early part of April, April 7th, to be exact, a meeting was arranged with Mr. Fellman in the office of Mr. Adolph Koven, I believe that is K-o-v-e-n. Mr. Koven is a conciliator with the State of California Conciliation Service, and he had contacted me and also Mr. Fellman prior to April 7th and asked if we would be receptive to a meeting. The answer was yes, and such a meeting was arranged for April 7th. [206]

Q. Was anyone present besides you three?

A. No one else was present.

Q. Will you go ahead and tell what was said and by whom? [207]

\* \* \*

A. \* \* \* Mr. Koven suggested that Mr. Fellman and I have lunch together and see if we couldn’t come to some understanding, or, at least, have an exchange of views further on the situation, which we did. We went out and had lunch together. During the

(Testimony of Ernest Tutt.)

close of this lunch period, Mr. Fellman brought up a couple of items relative to the contract. One objection which he raised, and I had asked him what objections he had towards signing the contract, one objection he raised was that he didn't want to sign the California Footwear contract, that the factory in Venice was now known as the Trina Shoe Company. I said, "Obviously, if you sign the contract, the name of the [208] contract will be changed. Instead of reading as a contract between the California Footwear Company and the United Shoe Workers, it will now become known as Trina Shoe contract made with the United Shoe Workers."

Another item which he raised was in regard to the seniority clause. He said it was his understanding that the seniority exception in the agreement called for job seniority, that under the seniority clause it wouldn't be possible for him or for the company to place a worker on more than one job. I told him that that was utterly untrue. That the union recognized a number of smaller shops and I pointed out to him that we had quite a few shops as small and, in some cases, smaller than Trina or California Footwear, and in those cases the union recognized that it was necessary for a worker to perform two, three, four, five and sometimes even a half-dozen different jobs in order to have a day's work, and the contract would be no bar towards him giving a worker more than one job to do. I told him if it satisfied him further that I would be will-

(Testimony of Ernest Tutt.)

ing to agree to further clarification of that seniority section.

With that, we returned to Mr. Koven's office and we resumed our discussion. I told Mr. Koven of some of the discussion which had been going on between Mr. Fellman and myself during the lunch hour, and I told him the circumstances, I told Mr. Koven further, Mr. Fellman, of course, was sitting [209] there listening to everything that was going on, and I told Mr. Koven further than Mr. Fellman had raised two objections which we had, as far as I knew, had been straightened out, and, therefore, since there was no other objections raised by Mr. Fellman, I didn't see why we couldn't sign a contract and settle these questions.

Mr. Fellman then spoke up and said, "Well, there is a number of other things which I don't like in the contract."

I asked him what they were and he said, "Well, I will have to study the contract. I don't know, right now, but there are some other things I don't like."

I told him we are just not going to change each and every little thing in the contract to suit him. We have had this contract at California Footwear downtown and there was no questions in regard to seniority that was ever raised and I said we didn't intend to change all of these other things in the agreement to satisfy you, because you can't even tell me now what the changes are that you have in mind.

(Testimony of Ernest Tutt.)

So with that the meeting came to an end. [210]

\* \* \*

Q. (By Mr. Perkins): Did Oster serve as a steward at Trina? A. Yes, he did.

Q. How was he selected?

A. Selected by myself.

Q. And was there any other steward at Trina during the time you say Oster was a steward there?

A. No, there wasn't.

\* \* \*

Trial Examiner Hemingway: Well, I think that might be [272] a little more intelligible if we knew when Oster became a steward at Trina.

The Witness: Well, it would be sometime during February. I don't know whether I have the exact date or not. [273]

\* \* \*

### ANNA C. CHERRY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [283]

### Direct Examination

\* \* \*

By Mr. Smith:

Q. Have you ever been employed by Trina Shoe Company? A. Yes, I was.

Q. What was the approximate date of your first day of work with the company?



(Testimony of Anna C. Cherry.)

A. Well, I think it was around the 1st of March. I am not sure, but I think it was.

Trial Examiner Hemingway: This year?

The Witness: That's right.

Q. (By Mr. Smith): Will you tell us the events in connection with your being hired?

A. Well, I went there and I walked in the office and Mr. Lewis was sitting there in the office.

Q. Was that Mr. Jack Lewis, or——

A. Jack Lewis was sitting in the office. I asked him about a job, and he said, "Wait a minute." So he goes back into the plant and sends Joe Levitan out; and, of course, Joe was the one that hired me.

Q. When Joe hired you——

Mr. Perkins: I move to strike the sentence "Joe hired me," as a conclusion. [284]

Trial Examiner Hemingway: Well, just state the conversation, what he said to you.

Q. (By Mr. Smith): First of all, who was present with Joe and yourself, and anyone else?

A. That I don't remember; whether it was just the two of us or whether Mr. Lewis came back. I don't remember.

Q. Will you state whether Mr. Fellman was in the room, if you know?

A. Not that I remember.

Q. Will you state what was said and by whom?

A. Well, I don't know just what was said, but, anyway, Joe told me that he could use me. And it

(Testimony of Anna C. Cherry.)

was around 10:30, and asked me if I could come back at noon.

Q. Afternoon?

A. Yes, prior to lunch, and go to work.

Q. And did you so return?

A. I did. I went home and came back and went to work. [285]

\* \* \*

Q. While you were working in cutting straps who directed you in your work?

A. Well, Joe usually came around and tell me what to do.

Q. Is that Joe Levitan?

A. That is right, Joe Levitan.

Q. Did anyone else direct you in your work?

A. Yes, sir, sometimes Joe Levitan say, "I know what I want you to do, but I don't know how it is done." So he get Mr. Fellman and bring Mr. Fellman and Mr. Fellman show me how he want it done.

Q. Did you have any conversations at any time during this period from early March until April 2nd with Mr. Fellman wherein the union was mentioned?

A. Well, yes. A couple of days before I was discharged, it was either Tuesday or Wednesday——

Q. Now, would that be either Tuesday the 31st of March or Wednesday the 1st of April?

A. No, of March.

Trial Examiner Hemingway: Well, Wednesday

(Testimony of Anna C. Cherry.)

of that week would be the 1st of April. Is that the one you are talking [286] about?

Q. (By Mr. Smith): Are those the dates you are referring to?

A. Well, yes. He came around to me when I was washing my hands and asked me what I thought about the union, and I didn't answer him.

Trial Examiner Hemingway: Was there anyone else there?

The Witness: No, there wasn't. I didn't answer him. And he went ahead to say that the union was no good, that they wouldn't do anything for us, and that the union could close the shop down and then everyone would be out.

Q. (By Mr. Smith): Did he say anything, or did you say anything else?

A. No, I didn't. I just walked away.

Q. Did that end the conversation?

A. That ended the conversation. [287]

\* \* \*

### GERTRUDE SMALL

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows [298]

### Direct Examination

\* \* \*

By Mr. Smith:

Q. While you were employed by the company was there held any general meeting of employees

(Testimony of Gertude Small.)

where the subject of the union came up, on the company premises?

A. Yes, there was, sir. One afternoon, I think the meeting was scheduled for 3:30, if I am not mistaken, and Mr. Fellman spoke.

Q. Before we get to the meeting itself, did anybody direct you to go to the meeting?

A. Well, we were told that there was going to be a meeting, and right around my work bench. They all gathered in the packing room.

Q. Who was present at this meeting? [299]

A. All the employees, and Mr. Fellman and Mr. Lewis.

Q. Mr. Jack Lewis? A. Yes; and Joe.

Q. Was Mr. Albert Lewis there?

A. Yes, sir.

Q. All right. Will you proceed to tell us what occurred, and what was said, and by whom?

A. Well, Mr. Fellman spoke and spoke about the union and said something about the union couldn't do much more than what they were doing, and the union promises one thing and they just don't do it—well, a lot of that stuff, about 15 or 20 minutes of it. [300]

\* \* \*

BLANCHE ROARK

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Trial Examiner Hemingway: What is your full name, please?

The Witness: Blanche Roark. [308]

\* \* \*

Direct Examination

By Mr. Smith:

Q. Were you ever employed by California Footwear Company at their Los Angeles address?

A. Yes, I was.

Q. And for what period of time were you there employed? A. About three years.

Q. From when to when?

A. Well, that would be from 1950 to the first part of '53.

Q. And what was your work in that period?

A. Platform stitcher.

Q. Did you perform that work throughout that period?

A. No. I guess about the first year I worked there I was a sock stitcher.

Q. During the last two years you worked as a platform stitcher? A. Yes.

Q. During early 1953, did you learn of the fact that the company was beginning operation in Venice?

A. Well, it was rumored around the shop, but we didn't know anything different ever told to us



(Testimony of Blanche Roark.)

that they was going to operate one. But it was rumored around the shop.

Q. As a result of your hearing those rumors did you have any conversation with anyone concerning employment?

A. Well, I talked with Mr. Fellman, and I asked him——

Q. Where did this conversation take place? [309]

A. It was at my machine at California Footwear, on Los Angeles Street.

Q. And about when did it take place?

A. It was around the last of December, or the first of January; somewhere in there.

Q. And was anyone else present besides you two?

A. No.

Q. What was said, and by whom?

A. Well, the conversation came up about this, he was going back in business, Mr. Fellman, and so I asked him about a job, and he said, "Probably I can use you later on." And that is all he said.

Q. Now, did you have any later conversation with Mr. Fellman, or any other person, concerning work in Venice?

A. Well, Mr. Tutt and Ed Morris and Ruth Morris, we went down in the Venice plant about February the 9th, I think, somewhere around there, and I went over to Mr. Joe Levitan and asked him if I could have my job back, and he said, "Go see Maury." So I went over and talked with Maury.

Q. You refer to Maury Fellman?

A. Yes, Maury Fellman.

(Testimony of Blanche Roark.)

Q. Who was present in your conversation with Mr. Fellman?

A. I think Ruth Morris was there.

Q. Will you tell who she is?

A. Well, she worked at the California [310] plant.

Q. Anyone else present?

A. No, that is all.

Q. Go ahead and tell us what was said, and by whom?

A. Well, I asked Mr. Fellman about the job, and he said, "Probably I can use you later on." He says, "I will call you." I think that is on a Thursday or Friday, and he says, "I will call you on Saturday morning and let you know when you can come to work."

Trial Examiner Hemingway: You mean, were you talking with him on Friday and he said he would call you on the next day?

The Witness: I am not sure—it was Thursday or Friday.

Trial Examiner Hemingway: And he said he would call you on the Saturday of the same week?

The Witness: Yes.

Q. (By Mr. Smith): Did you hear from Mr. Fellman by the next Saturday?

A. No, I didn't hear from him. I waited until around noon, and he didn't call, so I phoned him.

Q. And what was said?

A. And he said, "Well, I can't use you right now; but I'll call you later."

(Testimony of Blanche Roark.)

Q. Did you ever hear from him later?

A. No, I didn't hear any more from him.

Q. Did you hold any position in the union at any time that [311] you worked for California?

A. Yes, I was shop steward.

Q. Were you the chief shop steward?

A. Yes.

Q. And through what period of time did you hold that position?

A. Well, that was the year of '52.

Q. And did you hold that position during the last several months of your employment at California?

A. I did. [312]

\* \* \*

Q. Now, you have received a letter from Trina about going to work out there, haven't you?

A. Yes, I have.

Q. When was that?

A. About two weeks ago.

Q. And did you go back?

A. No. But I called them.

Q. What did you tell them?

A. I told them, I asked them about the job, and he said I could come back to work——

Q. He said you could? A. Yes.

Q. But you haven't gone back?

A. No. [313]

\* \* \*

Q. Did you see any platform stitching done when you went out to see Mr. Fellman?

(Testimony of Blanche Roark.)

A. Yes.

Q. Lou Oster was doing it, wasn't he?

A. I don't know the name, but I know it was a man.

\* \* \*

Q. You don't know whether or not the man who was doing the job at Venice was a Union member or not?

A. No, I don't know.

Q. Or whether he was the union steward? [317]

A. No, because I wouldn't know that. [318]

\* \* \*

Trial Examiner Hemingway: Now, if I recall the testimony correctly you worked at California to approximately the end of January of this year?

The Witness: Yes, I did.

Trial Examiner Hemingway: And then how long after that was it that you first went to Venice?

The Witness: I went to Venice around in February.

Trial Examiner Hemingway: I mean, how long after that was it, a week or two weeks, or what?

The Witness: I guess about a week.

Trial Examiner Hemingway: And it was on a Thursday or Friday?

The Witness: Yes. [321]

Trial Examiner Hemingway: I'd like to hand you a calendar and see whether or not you can fix it any better from that.

The Witness: Well, I think it was around about the first week in February.

(Testimony of Blanche Roark.)

Trial Examiner Hemingway: That would make it either February 5th or 6th.

The Witness: Yes, right around in there. I am not certain of those dates, definitely certain of the dates. [322]

\* \* \*

### ETHELINE SMITH

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [323]

### Direct Examination

\* \* \*

By Mr. Smith:

Q. Now, with respect to the first time that you worked, I'll ask you what was the date that you first went to the company to seek employment?

A. I can't remember the date of that.

Q. Tell us about when it was?

A. I think it was in April. I am not sure, but I think it was in April.

Q. And who did you talk to, if anyone, at that time, about going to work?

A. Well, we happen to be down in that way, so we——

Q. Who do you mean by "we"?

A. Charlotte and myself.

Q. Charlotte Parker?                      A. Yes.

Q. Go ahead.

A. So we saw this ad "Help Wanted." So we decided we stop in and see. So we went in there and



(Testimony of Etheline Smith.)

we talked to the secretary, I guess who it was, the woman who was in there, and she called Joe. And so we talked to him. So he decided that Charlotte comes back at that time, next day. So she [324] went back the next day and went to work. So about a week later he told her to tell me to go back. But I never did go back.

Q. You didn't go back at that time, but you say you did go back to the company on about May 18th?

A. Yes.

Q. And what happened at that time?

A. Well, he called me——

Q. Who is "he"?

A. Joe called me. So I went back down there.

Q. Do you mean by calling you, did he telephone you?

A. Yes. And so I went down there and he put me to work the same day that I went down there.

Q. And you worked for two weeks that time, is that correct?      A. Right.

Q. What kind of work did you do?

A. First I was cleaning shoes, and then they put me to cementing shoes.

Q. Now, during this two week period who told you what to do and gave you instructions about your work?

A. Joe. He always done that.

Q. Did Mr. Fellman ever give you any instructions about your work?      A. No.

Q. Did he talk to you at all on any occasion?

(Testimony of Etheline Smith.)

A. No. [325]

Q. Did Mr. Jack Lewis ever talk to you about your work?

A. No; only one time he said that I wasn't doing it quite fast enough. So he showed me how to do it faster.

Q. Now, why did your work end at the end of two weeks?

A. Well, Joe told me that the work that I was doing was caught up, and so he told me I didn't have to come back the next day, and that he would call me later on.

Q. Did he call you at a later time?

A. No, not until this last past three weeks that I went back.

Q. But he did call you three weeks ago?

A. Yes.

Q. And you went back to work again?

A. Yes.

Q. Now, you said you worked three days this time. Who directed you or told you what to do in this period of time?      A. Joe did. [326]

\* \* \*

CHARLOTTE PARKER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [331]

Direct Examination

\* \* \*

By Mr. Smith:

Q. Have you ever been employed by the Trina Shoe Company in Venice? A. Yes.

Q. And what period of time did you work there, beginning when and ending when?

A. I started around April the 6th or 8th——

Q. And you are still working there?

A. Yes.

Q. Was there part of that time that you were laid off, or not working? A. Yes.

Q. Now, will you tell us about your first visit to the plant seeking employment, when was that?

A. That was in April.

Q. Was that the same time as you were employed? A. Yes.

Q. And you said that was about April 6th or 8th? A. Yes.

Q. Who did you first talk to when you entered the plant? A. Joe.

Q. Was anyone with you as you went into the plant? A. Etheline and I. [332]

Q. Is that the girl who just testified?

A. Yes.

Q. And who did you first talk to? A. Joe.

(Testimony of Charlotte Parker.)

Trial Examiner Hemingway: Is that Joe Levitan?

Q. (By Mr. Smith): Is that Joe Levitan?

A. Yes.

Q. In this conversation, or later this day, did you talk to Mr. Fellman? A. No.

\* \* \*

Q. All right. Will you go ahead and tell us what was said?

A. The first day I went in he wanted to know did someone tell me about the job, and I told him I saw the sign in the window. So he talked to Etheline and I and told me to come back the next morning. That was the end of the conversation. I came back the next day.

Q. You came back the next morning. And who put you to work? A. Joe.

Q. Now, on this day did you talk to Mr. Fellman or Mr. Jack Lewis? [333] A. No.

Q. Now, in the period of your employment who has instructed you or told you what to do?

A. Joe.

Q. Has Mr. Jack Lewis ever given you any instructions?

A. Just once in a while; but not often.

Q. What kind of instructions did he give you on those occasions?

A. Sometime he came at the time I was cleaning shoes and sometimes he come and show us how to clean them. But that was all.

(Testimony of Charlotte Parker.)

Q. Did Mr. Fellman ever give you any instructions?  
A. No. [334]

\* \* \*

### Redirect Examination

By Mr. Smith:

Q. Did you ever have any conversation with Mr. Jack Lewis about the union?  
A. Yes.

Q. When did that occur?

A. I think it was about the second week after I was there.

Q. And where did it occur?

A. In the plant, at the cleaning table.

Q. Who else was present besides you and Mr. Lewis?  
A. Lois Murray.

Q. What was said, and by whom?

A. Well, Jack asked me had anybody had me try to join the union. And so I said no. And he said just some girls in the plant trying to get something started, and always a few of those in every plant.

Q. Is that all the conversation?

A. Yes. I had signed a pledge card, but I told him no. [338]

\* \* \*



## LOIS HARTENTS MURRAY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

## Direct Examination

\* \* \*

By Mr. Smith:

Q. Have you ever been employed by the Trina Shoe Company at Venice? A. Yes, I have.

Q. Can you tell us of the periods of your employment, when you went to work?

A. It is around April 15th, I think.

Q. How long did you work at that time?

A. I worked until about August 10th.

Trial Examiner Hemingway: This year?

The Witness: Yes.

Q. (By Mr. Smith): And when you first went to the plant who did you talk to about working there? A. I talked to Joe and Albert.

Q. And did you talk to them at the same time?

A. Yes, both of them were with me when I talked to them.

Q. Was anybody else there? [339]

A. It was another lady in there, but I don't know who she was. She was trying to get on, too.

Q. Trying to get on work? A. Yes.

Trial Examiner Hemingway: Was this in the office?

The Witness: Yes.

Q. (By Mr. Smith): What was said at that time, and by whom?

(Testimony of Lois Hartents Murray.)

A. Well, I asked Joe, I told him that I needed a job, and I asked him, was he hiring, and he told me yes, but he wouldn't need me right then, and said he would call me back in three days. And he didn't call me. And I went back myself, and Jack hired me then.

Q. Did Albert do any talking at this first time?

A. No, no, only asked me for my telephone number. That is all.

Q. You say you went back a second time. How many days later was that?

A. I think about three days later, and they hired me.

Q. You say that Jack put you on then?

A. Yes.

Q. Did you talk to anybody besides Jack this second time?      A. No.

Q. You say your work ended on August 10th?

A. Yes.

Q. What happened then? Did you quit or get laid off—— [340]      A. Laid off.

Q. Who laid you off?      A. Joe did.

Trial Examiner Hemingway: Will you go back a couple of questions there? I got lost on the identity of the speakers.

(Record read.)

Trial Examiner Hemingway: Jack was the one who hired you, and Joe laid you off? Is that right?

The Witness: Yes.

(Testimony of Lois Hartents Murray.)

Trial Examiner Hemingway: That is Jack Lewis and Joe Levitan?

The Witness: Yes. [341]

\* \* \*

Q. (By Mr. Smith): Now, in any of this period did you ever have any conversation with Mr. Jack Lewis about the union? A. Yes, I did.

Q. Was there one or more than one such conversation? A. There was more than one.

Q. When did the first one occur?

A. It was about the second week after I was there. He called me to the office.

Q. He called you into the office? A. Yes.

Q. And was anyone else present besides you and he? A. No.

Q. What was said, and by whom?

A. He called me, and he asked me how did I like the job I was doing, and then he asked me had I joined the union, and I told him no, I hadn't, and he told me not to because I would be out a lot of money paying the union dues. And that is all he said.

Q. You said there was at least one other conversation. [342] When did the next conversation occur?

A. I had been laid off before he called me back into the office again, and the same day he called me back to work, I was laid off, and he called me back, and he said did I join the union and I said yes. I said I didn't know what it was about when I joined.

(Testimony of Lois Hartents Murray.)

Trial Examiner Hemingway: You told him that?

The Witness: Yes, I did.

Q. (By Mr. Smith): Go ahead.

A. And he asked me who give me the slip to sign, and I told him I didn't remember because it was when I first came to work, and he told me it was only someone who was trying to be smart around; and that is all he said. [343]

\* \* \*

### EUGENE PIASEK

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

### Direct Examination

\* \* \*

By Mr. Smith:

Q. Have you ever been employed at the Trina Shoe Company at Venice?

A. Yes, I was—I am.

Q. You are now so employed?

A. That is right.

Q. About when were you first employed by the company?

A. I was first employed, I think, April 6th.

Q. What day of the week was that, if you recall?

A. It was on a Monday that I came in to work.

(Testimony of Eugene Piasek.)

Trial Examiner Hemingway: That is this year, isn't it?

The Witness: That is right.

Q. (By Mr. Smith): Did you work all of the time from that date up to the present time?

A. No, I was laid off for a couple of months. [349]

Q. About when did that layoff period come?

A. Sometimes in July or June, I don't remember exactly the time.

Q. You mean beginning in June or July, is that right, and running a couple of months?

A. That is right.

Q. All right. Now, will you tell us what happened in connection with your hiring. Were you interviewed at the plant? [350]

\* \* \*

A. I came in, and Maury Fellman asked me who I am, and I told him, "I am sent from the Unemployment. I am a cutter." They called for a shoe cutter, so Mr. Maury told Jack Lewis to go ahead and talk to me. Mr. Jack Lewis started to talk to me and he asked where I worked, and I told him I had worked at Ted Saval's. So when I told him that I worked at Ted Saval's he asked me am I a union member. I told him I was and I had an argument with the business agent from the union and they kicked me out from the union.

So Mr. Jack Lewis said, "O. K., come in Sat-



(Testimony of Eugene Piasek.)

urday morning and we'll start you; we'll see how you cut." And I came in Saturday morning. [351]

\* \* \*

Q. (By Mr. Smith): Did you have any conversation with anyone this day concerning your coming back to work the following Monday?

A. Yes. Maury Fellman took me to Jack Lewis in the office [352] and told Jack Lewis that I am cutting reasonable, so Jack Lewis said if I am a good cutter he wants me to come back in Monday.

\* \* \*

Q. During the period that you were employed by Trina, did you ever attend any union meeting?

A. Yes, I did.

Q. Did you attend more than one union meeting?

A. Yes; I attended two union meetings.

Q. What was the date of the first union meeting you attended?

A. The date of the first union meeting was sometime about April 14th.

Q. Where was this meeting held?

A. This meeting was held in Santa Monica on Main Street; south or north of the company—I think it was north of the company—isn't it, this place? It was close to Venice Boulevard.

Q. All right. Will you go ahead and describe—well, I will ask you, first, if any incident occurred in your going [353] to the union meeting?

A. I went to the meeting, and I parked my car—when I parked my car, going to the front where

(Testimony of Eugene Piasek.)

it was, the pedestrian and walkway, about three cars in front of me, was parked Jack Lewis' Pontiac.

Q. Where did you park with respect to the side of the street where the union meeting was held? On that side or on the other side?

A. On the other side.

Q. And you say Mr. Lewis' car was parked ahead of yours?

A. That is right, about three cars in front of mine.

Q. Will you go ahead and explain what you did and what you saw?

A. So I walked on the crosswalk, the pedestrian crosswalk, and looking, I saw Mr. Jack Lewis' car and he was sitting in the car. When I walked through he bent over to the side, like I shouldn't see him—so (illustrating)—and I walked by.

Q. Did you go into the union meeting?

A. That is right, I did.

Q. By what entrance did you enter?

A. Through the front entrance.

Q. And on the following day did you have any conversation with anybody at the plant concerning the union, or the union meeting? [354]

A. Yes. When I came in in the morning, Jack Lewis was in the factory and he said to me—

Q. Just a moment. Was anyone present when this was said?      A. Nobody else.

Q. Will you go ahead?

(Testimony of Eugene Piasek.)

A. He said to me, "I thought you told me you were not a union member."

I said, "I am not. I went to see what is going on over there." [355]

\* \* \*

Q. When you were first employed by the company was any other cutter working at the company?

A. Yes. His name was Jack Rosenthal.

Q. How long did he and you both work for the company through this period?

A. We worked about three weeks together.

Q. And at the end of that time was it he or you who was not cutting?

A. Jack Rosenthal left.

Q. Did you have any conversation in the next few days with anyone at the plant concerning the reason for Rosenthal not being present?

A. Yes. The next day Albert Lewis told me to come in at 10:00 o'clock in the morning. I didn't know what the reason was for it. So I came in the next morning at 10:00 o'clock. Al Lewis told me the reason was that he told me to come at 10:00 o'clock in the morning was because, "I fired Jack Rosenthal last night."

Q. What was the date of that, if you recall?

A. I can't recall it.

Q. What was your usual hour of reporting in the morning?

A. My usual hour was between 8:00 and 8:30.

(Testimony of Eugene Piasek.)

Q. Did you have any conversation with anyone else in this [356] period about Mr. Rosenthal?

A. Yes, about a day later. Jack Lewis came over to the machine and I asked him why Rosenthal isn't working any more, and he told me that he made too much trouble here, and to him, for the union—this is the reason.

Trial Examiner Hemingway: Will you read that answer, please?

(Answer read.)

Trial Examiner Hemingway: From your answer I could understand that Rosenthal made too much trouble both for the employer and the union.

The Witness: He made too much trouble for the employer by the union. [357]

\* \* \*

Q. All right. Now, this conversation you were about to describe, was anyone else present besides you and Mr. Fellman?      A. Nobody else.

Q. Where did it occur?

A. The conversation occurred near my machine.

Q. Will you go ahead and tell what was said, and by whom?

A. Maury Fellman told me that he came up a week before, [358] he went into Jack Lewis and he told him it would be a lot better for the company, the shoes, get them cheaper, if they put everybody on piece work. Jack Lewis said to him, "O. K., we will make a try." They put everybody

(Testimony of Eugene Piasek.)

on piece work and the company gave out a lot more shoes than they usually used to give out, and the people used to make more money. So the end of the week Jack Lewis called in Maury Fellman and he——

Q. Now, you are describing what Mr. Fellman told you at this time?      A. That is right.

Q. Go ahead.

A. Mr. Fellman said that Jack Lewis called him into the office and he told him the people were making too much money and he is spoiling them. [359]

Q. Did you ever have any disagreement with the company over how much was included in your check in a given week?

Mr. Perkins: What company are you talking about?

Q. (By Mr. Smith): With Trina?

A. Yes, sir, I did. It was quite a few times. I got my check and I knew I was supposed to have more money.

Q. What did you do on those occasions?

A. I went in and said to Jack Lewis, I said, "Jack, I think the check isn't right; should be more money than it is." So he went over the figures and he found the mistakes. It was one particular time that he found \$26.00 in a mistake on the check.

Q. And did he make the check?

A. That is right, he made the check.

Q. Now, did you have any conversation with Mr. Fellman about a claimed error in your check?



(Testimony of Eugene Piasek.)

A. That is right. It was Friday afternoon. He brought me over the check. It was about 4:00 o'clock.

Q. Is this the conversation you were about to relate a couple of minutes ago?

A. That is right. [362]

Q. Can you place when this occurred, the month?

A. Sometime in May, the end of May.

Q. Will you go ahead?

A. And I was missing money in the check. I went over—I was looking for Mr. Jack Lewis. Jack Lewis wasn't there. I went over to Mr. Fellman and I told Mr. Fellman, "I am missing money from the check."

So Mr. Fellman said, "You know, Gene, I can do nothing about it. You'll have to wait for Jack." So I waited until next week——

\* \* \*

Q. (By Mr. Smith): What did you do on the following week about this alleged error?

A. In the following week I brought back my paycheck and I showed it to Jack Lewis and he brought the timecard where [363] he used to count together, and we found an error of some money in the check.

Q. And did he correct the error?

A. Yes, sir. [364]

\* \* \*

Q. Did you have any conversation with Mr. Albert Lewis [367] wherein the subject of the reason

(Testimony of Eugene Piasek.)

for the Trina operation being in Venice came up? [368]

\* \* \*

A. Yes, there was.

Q. When did it occur?

A. It occurred sometime in May of this year.

Q. Where did it occur?

A. It occurred when I was working on the machine.

Q. And was anyone present, other than yourself and Mr. Albert Lewis?

A. Just myself and Mr. Albert Lewis.

Q. Will you please tell us what was said, and by whom?

A. We were talking, and I said to Albert Lewis, "Wouldn't it be better for you to belong to the union than to run away from them? It costs you more money——"

Trial Examiner Hemingway: When you say "you," are you referring to him personally?

The Witness: "To your father," I mean. And he said no. He said, "The first year we belonged to the union we lost \$10,000.00."

Then I asked him what they would do if the union would catch up with them over here. He said that they will move out to another city. [371]

\* \* \*

Q. (By Mr. Smith): Now, my next question has reference to the entire time that you worked for Trina, which I understand is most of the time until

(Testimony of Eugene Piasek.)

early April—from early April until now, except for a two months layoff period—does that describe, in a general way, the period that you worked for [375] Trina?      A. That is correct.

Q. Now, in that period of time did you make any observation concerning the time that Mr. Jack Lewis was in the building in which the Trina factory is located?      A. Yes, I did.

Q. What was that observation?

A. When Jack Lewis used to be in the plant, most of the time, he used to spend in the factory, inside, checking the work, and so forth.

Q. Where else did he spend time?

A. In the office.

Q. And keeping in mind the ordinary work week of 40 hours, or whatever it was, how much of that time did he spend in the building?

A. He spent in the building about 85 per cent, between 80 and 85 per cent.

Q. And the other 15 or 20 per cent he spent then outside of the building?

A. Out of the building.

Q. I will ask you, was that on a particular day, or on several days of the ordinary work week?

A. Was on one day of the week.

Q. And on that day what was his practice?

A. Selling outside. [376]

Q. Did he spend any time in the office on that particular day?

A. A couple of hours in the morning.

Q. And then he would be gone the rest of the

(Testimony of Eugene Piasek.)

day? A. That is correct.

Q. Now, what chance did you have to observe his being in the plant? Was your operation in a position where you could see the office and the rest of the factory?

A. I used to go in and pick up the tickets for my cutting.

Q. How many times a day did you do that?

A. Sometimes four, five times a day, and I used to go into the office and call Albert Lewis in the factory—he have to lay out the material for me, because every time I had to need the material I had to go in to look for Albert Lewis.

Q. What was Albert's job in the plant, as far as you could see, with respect to your job? How did your two jobs interrelate, if at all?

A. He used to lay out the material for me.

Q. Did that take a larger part or a lesser part of his time at the plant?

A. Used to take the lesser part of his time.

Q. Where did Mr. Joe Levitan spend his time? What portion of his time was spent in the building at which Trina is housed? A. 100 per cent.

\* \* \*

Q. Are you able to tell us any reason why any or all of these individuals would come around to you and confide their business plans to you?

\* \* \*

The Witness: Yes, I will. Mr. Maurice Fellman wasn't very good off in the plant there.

(Testimony of Eugene Piasek.)

Trial Examiner Hemingway: Wasn't very good off?

The Witness: When Albert Lewis got a raise from the company from \$75.00 to \$90.00, Maury Fellman came over to me and he complained about it, that he is supposed to be the president of Trina Shoe Company and he is getting \$80.00, which he has to support a wife and two children; and [401] Albert Lewis, because he got married, he got a raise to \$90.00. [402]

\* \* \*

Q. How did you go from the plant to the union meeting? Did you walk or ride in a car or what?

A. I rode in the car.

Q. Your own? A. That is right.

Q. Anybody else with you? A. No.

Q. And was Mr. Lewis in the car by the curb when you got there?

A. He wasn't by the curve, he was parked.

Q. Parked at the curb?

A. Wasn't at the curve; was not a curve over there. [419]

Q. Anyway, the car was on the side of the street? A. That is right.

Q. Was it already there when you got there?

A. Yes.

Q. You didn't see him pull in and park?

A. No.

Q. You don't know when he left the plant that day? A. No, I didn't.



(Testimony of Eugene Piasek.)

Q. When was this union meeting called, to your knowledge?

A. It was on the 14th of April, if I am not mistaken. [420]

\* \* \*

Q. Were you told by anybody connected with Trina Shoe Company that there was any practice of not punching in or out on Saturdays?

A. Yes, I was.

Q. By whom? [433]

A. By Joe Levitan.

Q. By anyone else?

A. No.

Q. Did he say that that was the way it was done, that employees who worked on Saturdays didn't punch in?

A. He told me Friday night that, when this was the first Saturday he wanted me to work, "You come in tomorrow morning on Saturday, but you won't punch the card." [434]

\* \* \*

Q. (By Trial Examiner Hemingway): I want to get it straight on this testimony concerning your seeing Mr. Jack Lewis before the union meeting.

With reference to the place where the building was that you were going to enter, where was his car, on the far side or the near side of the street?

The Witness: Across the street.

Q. Was it on the street or in a parking lot?

The Witness: On the street.

Q. And was his car parked in the direction in which traffic generally flowed on that side of the street?

(Testimony of Eugene Piasek.)

The Witness: The car was parked in the direction facing the factory.

Q. The factory?

The Witness: That's right. [435]

\* \* \*

Q. Did you observe him again after that one glimpse, at any one time before you reached the Union Hall?

The Witness: Yes; I have seen him, and then when I came across to the Union Hall we were staying outside and I mentioned to a few people there that Mr. Jack Lewis was parked across the street. [438]

\* \* \*

Q. (By Mr. Perkins): You told some people on the sidewalk that Mr. Lewis was sitting across the street?

A. Yes.

Q. And did you tell them where he was?

A. Yes.

Q. And did they turn around and look at him?

A. Yes, a few people looked. [439]

\* \* \*

### JACK ROSENTHAL

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

#### Direct Examination

\* \* \*

By Mr. Smith:

Q. Mr. Rosenthal, were you ever employed by

(Testimony of Jack Rosenthal.)

the California Footwear Company at the Los Angeles address?      A. Yes, I was.

Q. About when?

A. About four years ago.

Q. And were you ever employed by the Trina Company? Were you ever employed by the Trina Shoe Company at its Venice location?

A. I was.

\* \* \*

Q. (By Mr. Smith): In 1952 did you have any conversation with Mr. Jack Lewis concerning working again at California? [443]      A. I did.

Q. What was the date of the first such conversation, and what gave rise to it?

A. The approximate date was about the middle of December. I don't know the exact date. What gave rise to it was the telephone call I had received from him approximately two or three weeks earlier. He asked me to come back to work for him. At the time I told him I was doing something else and I was satisfied with it. Later, what I was doing didn't turn out right and I called him back and asked him if the job was still open. He said it was and to come down and see him.

Q. Did you go down to see him at that time?

A. I did.

Q. And this was about mid-December?

A. About then.

Q. And did you talk to him at the Los Angeles plant?      A. I did. [444]

\* \* \*

(Testimony of Jack Rosenthal.)

Q. All right.

Will you go ahead and tell us what was said and by whom, in that conversation?

A. Well, Jack Lewis told me that he did not have an opening there at that time, but that there was an opening in another plant close to where I live. Incidentally, I lived at 3630 Kalsman Drive at that time, and it was only about seven or eight miles from the Trina Shoe Company. He said there are five clickers there and you will be the first employee. I asked him whether he had any financial interest in it, in the way of trying to find out who I was working for and he said, "I own all of it." [445]

\* \* \*

Q. Did you go to work at Trina after this date?

A. Not immediately after. I went to work about the 5th or 6th of January. I don't remember the exact date.

\* \* \*

Q. (By Mr. Smith): How long ago did you work continually at Trina?

A. I believe the last day I worked was April 27. I'm not exactly sure of that, it was approximate.

Q. Did you work substantially all the time, between, that is, between January and that date?

A. I worked straight through. [446]

\* \* \*

Q. Did you have any other conversations with Mr. Fellman concerning the union?

A. Yes, prior to the meeting. I was about to go home——

(Testimony of Jack Rosenthal.)

Q. Let's place the time of this. Was it the same day or a later day?

A. A day or two before, I don't remember exactly. I was on my way home. I was the last one to leave the place. Mr. Fellman and I were the only ones in the factory. Before I went out, he engaged me in conversation pertaining to the union and said to me, "If I were you, I wouldn't go to that meeting."

I said, "Why not?"

And he said, "You might be breaking bread with Jack Lewis some day." [453]

\* \* \*

Q. Have you ever been sent for in any period following?

A. Yes, approximately a month later a telegram came and asked me to come back to work. I did come back, I went out to see them rather, and told them that I was working on something. [455]

\* \* \*

The Witness: It was a telegram.

Q. (By Mr. Smith): When you went back, did you go to the plant as a result of that telegram?

A. Yes.

Q. And who did you talk to?

A. I spoke to Jack Lewis and Maurie Fellman.

Q. What was said and by whom?

A. I said that I was tied up right now and I would know in two or three days whether I would come back to work, and if they could use me at that time, if this deal that I was working on did not



(Testimony of Jack Rosenthal.)

materialize, I would go back to work. Well, it didn't materialize.

Q. Did either Mr. Fellman or Mr. Lewis make any comment about that?

A. No, they did not, but they led me to believe that I would be welcome back if I wanted to come back.

Mr. Perkins: Move to strike "led to believe."

Trial Examiner Hemingway: Sustained—granted, I mean. [456]

The Witness: Three days later I did come back and said that my deal fell through and I wanted to go back to work. Mr. Fellman told me at that time that there was no work, that they needed me three or four days ago but not now. [457]

\* \* \*

### LINDA MURRAY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

### Direct Examination

\* \* \*

By Mr. Smith:

Q. During the course of your employment, was there ever a meeting of the employees held on company premises when the union was discussed?

A. Well, the day that Mr. Tutt brought the names out there and showed them to Mr. Fellman, we had a meeting that evening.

(Testimony of Linda Murray.)

Q. Now, can you place the date of that meeting, if you know?

A. Well, it was along either the 23rd or 24th of March. It was the day he wrote the names out.

Q. Now, we will come to that meeting in just a moment. Did you have any conversation with Mr. Fellman about the union at any time earlier that day?

A. No, I hadn't.

Q. Did you have any conversation with Mr. Fellman about the union at any time around about the 24th of March?

A. After that meeting, I talked to him some.

Q. Who was present at the time you talked to him? Do you mean later the same day?

A. The same day. Aldea Callahan was across on another machine, right across from me. [478]

Q. That is Aldea Callahan's card that you have identified?

A. Yes, sir.

Q. Was anyone else present?

A. That is all, just the two.

Q. What was said and by whom?

A. I called him to work on my machine. My machine broke down and I called him to work on the machine and he said he was mad at me. I said why, and he said he didn't trust anybody any more, and he asked why I signed that union card. I said, "I signed the union card." He said, "Yes, you did. I know all of them that signed it." And he told Aldea, "You did, too." And she said, "Well, how do you know?" And he said, "Well, the Union man had been out and he said so."

(Testimony of Linda Murray.)

He set there a little while and—Fellman set there a while—and then he said to me. “I know where that rumor come from, now.”

There had been a rumor going around in the shop that Mr. Lewis was going to fire anyone that joined the union.

And I said, “I don’t believe it.”

And Mr. Fellman said to me, “I know where the rumor come from,” and I said, “Where?”

He said that Jack Rosenthal had told it and I told him, “No, he hadn’t said that. It hadn’t come from him. It come from the other room,” but I don’t know who it was from.

And he said, he asked me if I knew that they could shut [479] the shop down, and I said, “Well, that way it wouldn’t make no money for nobody.” [480]

\* \* \*

### Cross-Examination

By Mr. Perkins:

Q. Mrs. Murray, you referred to Mrs. Cherry. What kind of work did she do at the plant in Venice?

A. She cuts spaghetti, what you make to go on shoes and ties around the ankle.

Q. Were there any employees besides Mrs. Cherry doing that work at the time she was doing it?

A. They had a colored girl. I don’t remember her name, in fact, I never knew her name. They

(Testimony of Linda Murray.)

had a couple different colored girls on it, and then they had this Gerline Kelly on it and she got sick and then is when Anna Cherry was hired in.

Q. Well, while Mrs. Cherry was working there, though, on that work, was there other employees doing the same kind of work?

A. No, not then. [485]

\* \* \*

Mr. Smith: I propose the following stipulation: That at all times, from about late January until the current time, and except for two months, that the plant was largely shut down, that at the Trina plant there was a sock-stitching operation performed on a stitching machine that was the same type of operation and the same type of machine used which Blanche Roarke had performed during the last two years of employment at California Footwear; and, further, that this work at Trina, the sock-stitching at Trina, was at all times performed by a member of Local 122 of the United Shoe Workers of America, CIO.

Mr. Perkins: That is satisfactory. [504]

\* \* \*

Mr. Smith: We have one or two stipulations to propose. Do you want to go further with them, first?

Mr. Perkins: Yes.

This is information with respect to Trina Shoe Company. It is a California Corporation, incorporated August 6th, 1948. It has authorized capital of 500 shares of stock of \$100.00 par value each. Not all of that stock has been issued. I am unable to

give the particulars now, but I hope to be able to before the hearing is over.

The directors of Trina Shoe Company at the present time are Maurice Fellman and Ruth Fellman, who is his wife, and Evelyn Fellman, who is Mr. Fellman's sister.

The officers are Maurice Fellman, president, Ruth Fellman, secretary-treasurer.

All of the stock at the present time is held by Maurice Fellman and/or Ruth Fellman.

The only other persons who have ever been officers or stockholders of Trina Shoe Company are Louis Wolfe, W-o-l-f-e, and Izador Rosen, R-o-s-e-n. They are not connected with Trina Shoe Company at the present time. Neither Mr. Wolfe nor Mr. Rosen is related to Jack Lewis or Joseph Levitan, and neither of these gentlemen, that is Wolfe and Rosen, have ever had any interest in or dealings with California Footwear Company. [508]

Trial Examiner Hemingway: May I ask one question? You say that they were once connected with the organization. Did they cease to be connected before the latter part of 1952?

Mr. Perkins: Yes, it is my understanding that their connection with Trina ceased at least two years ago. I believe that Wolfe and Rosen at different times, in addition to having a stock interest and being directors, performed selling for Trina Shoe Company.

Further, I offer to stipulate that neither Jack Lewis nor Albert Lewis nor Joseph Levitan nor California Footwear Company has ever owned any



stock in Trina Shoe Company. Nor have any of the individuals named ever been an officer or director of Trina Shoe Company.

Further, when Trina Shoe Company was organized, Maurice Fellman transferred to it the equipment and other assets of a shoe manufacturing business which immediately prior to that time he had been conducting as an individual proprietorship.

I believe that covers what we talked about.

Mr. Smith: So stipulate. [509]

\* \* \*

Mr. Smith: I think the case on Banche Roarke is extremely strong. I don't believe my stipulation mentioned the name of Mr. Oster. If it didn't, we now concede he was the one who did this work at the new plant after—and, of course, we have shown that he was a union member. [527]

\* \* \*

Mr. Perkins: Now, we move to dismiss as to Jack Rosenthal. It appears there that the employer had to make a selection from among two union members and the same situation exists there. Moreover, it appears that he was recalled and didn't take the job when it was offered to him, although he admitted there was time enough for him to get ready to go back to work if he had wanted to.

I may say in that connection, maybe the Board isn't advised yet or the union, but Mr. Rosenthal returned to work this morning. There is work for one cutter, either Rosenthal or Piasek, on the present basis. Evidently the basis of this prosecution is

that Rosenthal was let go instead of Piasek. All right, we are adopting what seems to be the suggestion of the Board. Trina called Mr. Rosenthal and put him to work this morning. I suppose the Labor Board, as logically as everything done so far here, that is, the prosecution can say whatever the employer does here is wrong. We adopted the Board's, we understand the sense of the Board's suggestion, and have taken Mr. Rosenthal back this morning, without prejudice.

Trial Examiner Hemingway: My recollection was that there was evidence that someone else besides Mr. Piasek was working as a cutter, which would seem to indicate that there was room for two, and I didn't believe there was any suggestion at the [537] time that when Mr. Rosenthal was sent for that Mr. Piasek was going to be laid off, in lieu of Mr. Rosenthal.

Mr. Perkins: To break that down, I think the testimony is that at the time Rosenthal was laid off there were only two cutters there. Maybe somebody was doing the cutting work later on——

Trial Examiner Hemingway: I have considered that, Mr. Perkins, once an offer is made to reinstate, as it was in this case, that may be argued to be a complete exculpation and that even though there might have been a job for such a person, the respondent might, perhaps justifiably, refuse to offer to Rosenthal, who previously refused to accept or had not accepted, at least. I don't recall that there was any evidence of agreement to let the matter ride in abeyance; in other words, to extend the offer of

employment beyond the day when Rosenthal was hired. I may be wrong on that. What about that, Mr. Smith? Was there such evidence?

Mr. Smith: I think you have repeated the testimony exactly as was given.

Trial Examiner Hemingway: That is a matter, however, that I am not prepared to answer at the present time. I am not sure just what the cases may show on that.

Do you know whether there are any cases on that, Mr. Smith?

Mr. Smith: Well, no, I would consider that a factual problem and I think it might be exceedingly difficult, at least [538] for the future from now on, as to which of these two employees is entitled to the job, but I don't think that is material, at least to the question of discrimination, up to the time Mr. Rosenthal was given this offer which he testified to, which, if my recollection serves me right, was about a month after his discharge, and, incidentally, after the charge was filed. As a matter of fact, we have the situation on both Mrs. Roark and Mr. Rosenthal being offered their jobs back after they have filed the charge in the case.

Now, I take it, counsel's basic problem here is whether there was a discrimination extended through that first month. That is the primary problem to this point. What happened after that point is completely irrelevant.

Trial Examiner Hemingway: Let me ask this question: If I recall the evidence, there was discussion between the respondent and Rosenthal as to

whether or not he was familiar with leather cutting and also with Piasek and I think it was determined by the respondent that Piasek had more experience than Rosenthal in that, and inferentially let Rosenthal go because of the fact there wasn't going to be any plastic cutting for him.

Now, I am just wondering whether you contend there either was continued manufacture of plastic shoes, or if you are contending there was enough leather work for two cutters or just what your contention is, as to that? [539]

Mr. Smith: In the record, Mr. Trial Examiner, is testimony that about 85 per cent of cutting through the entire period herein, the material was plastic and about 15 per cent was leather cutting. Further, we contend that Mr. Rosenthal was capable of leather cutting and was not even given a chance to demonstrate a capability and that this was clearly proved in this record to be a pretext, rather than the actual reason for his layoff. I further point out that there is testimony in this record that indicates that there was, through all periods, material herein, more than enough work for one cutter; perhaps work for two, or, at least, one and one-half. And that this employer, to effectuate the discrimination, was willing to play fast and loose, both with the contract and with the wage and hour law by paying Mr. Piasek—by failing to pay him overtime for hours worked in excess of eight a day and in excess of 40 a week, while he worked through this period. I think it would add up to about 55 to 60 hours per



week, so I don't think the record is clear at all that there was work for only one cutter. It suggests, rather, a cutter and a half, or two cutters. As a matter of fact, both of them were employed for a period something like 30 days, indicating that there must have been work for the two of them during that period of time.

Mr. Perkins: Again, I think the general counsel is again trying to tell people how they should run their factory. Now, the fact that they were, I think anybody familiar at all with [540] manufacturing, particularly in lines of that having anything to do with styles, knows it goes up and down and the fact that you have two people employed at one time doesn't mean work for two, later on. All it means is there was work for two men when the two were working together. The testimony that Mr. Piasek worked overtime, in part, couldn't indicate work for two men. It indicates that there was work for more than one man working straight time 40 hours. Now whether or not to work a man overtime a few hours or whether to hire another man and give both of them bob-tail weeks or give one of them a full week and hire the other one for a day or two a week, is certainly a matter of management decision, and maybe Mr. Smith thinks that if he had the factory he would do it one way, but, certainly, for the employer that knows the business to do it another way, although it differs with the managerial discretion exercised in the general counsel's discretion, doesn't constitute an unfair labor practice. It indicates whatever the employer does the employer is going



to be wrong. If he lets Piasek go, or if he lets Rosenthal go, he will be charged with an unfair labor practice. Whatever way it turns up, general counsel will be able to rear back and go into talk about a general 8 (1) violation. Everything after that the employer does is bound to be wrong. All we can do is fight it, and that is what we are doing.

Trial Examiner Hemingway: I think the principal issue is [541] whether or not there was work enough for two men. On the general counsel's case he points to the stipulation that throughout the whole period 85 per cent of work was on plastic. Now, so far, I haven't heard any evidence from the respondent that during the period when Mr. Rosenthal was released there was any reduction in the call for plastic shoes, and, also, in view of the evidence that someone else besides Piasek was doing some cutting during this period, that taken together with the amount of work that Piasek was doing overtime might perhaps have made up enough work for two men. It seems to me that such matter would require explanation.

I am not making an ultimate decision at the present time, but I think the evidence that has been pointed out does support the general counsel's theory to be *prima facie*.

Mr. Perkins: I suggest that amounts practically to shifting the burden to the respondents, because on the basis of the showing made by the general counsel, which is so flimsy and which involves, really, a decision by the government as to how these people ought to run this plant, then it becomes

the duty of the respondents to justify their management decisions to the satisfaction of the government. We will try, under the situation that we are placed in by your Honor's ruling, and I will say that the effect of it is to shift the burden.

Trial Examiner Hemingway: I wouldn't call it shifting it, the burden of going forward with the evidence after a [542] *prima facie* case has been made out, and in denying your motion to dismiss Rosenthal, Cherry and Roark, I will not, of course, deprive you of the opportunity to make similar motions at the close of the hearing. [543]

\* \* \*

#### EUGENE PIASEK

a witness recalled by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows:

#### Direct Examination

By Mr. Perkins:

Q. Have you been to the plant, today, of Trina Shoe Company?           A. Yes, sir.

Q. You saw Jack Rosenthal there?

A. Yes, sir.

Q. You saw him working, did you not?

A. Pardon me?

Q. You saw him working?           A. Yes, sir.

Q. And did you say to somebody there that you were coming down here to the hearing and would give the employers some more trouble? [569]

A. No, sir.

(Testimony of Eugene Piasek.)

Q. You didn't say that, or anything like that, to anybody out there? A. No, sir.

Q. Did you say you saw Mr. Levitan there today? A. Yes, sir.

Q. Did you have any discussion with him?

A. May I say what I said to him?

Q. Did you have a discussion with him?

A. Yes, sir.

Q. And you said to him, did you not, that you thought you ought to have the job instead of Mr. Rosenthal? A. No, sir.

Q. Did you say anything to him about the cutting job? A. Yes, sir.

Q. You said you thought you ought to have it, didn't you?

A. No, may I say what I said to him?

Q. I don't care what you said to him. I will ask you the questions. If somebody else wants to ask you, they will ask you.

Mr. Smith: I will move all the testimony be stricken as wholly immaterial to any issue in this case.

Trial Examiner Hemingway: There is some of it that is relevant.

Q. (By Mr. Perkins): Right after being at the plant this [570] morning, you came down to the Labor Board hearing, did you not?

A. Yes, sir.

Q. You talked to Mr. Smith, didn't you?

A. Yes.

Q. You complained to him that Mr. Rosenthal was working instead of you, didn't you?

(Testimony of Eugene Piasek.)

A. I didn't say anything about it.

Q. Didn't you tell Mr. Smith that Jack Rosenthal was working instead of you?

A. Yes, but I didn't complain.

Q. You told him that? A. That's right.

Q. You asked him to do something about it?

A. I didn't, not yet.

Q. Didn't you ask him to do something about it? A. Not yet.

Q. You intend to ask him to do something about it? A. I don't know.

Q. Did he say whether or not he was going to do anything about it?

A. He didn't say anything. I didn't ask him anything.

Q. What did he say when you told him Jack Rosenthal was working instead of you?

Mr. Smith: I object. That is now wholly beyond anything in this case. [571]

Trial Examiner Hemíngway: Sustained.

Mr. Perkins: Well, I would like to make sure of that. If it is outside the case. Can the government tell me if it has any intention of proceeding against the respondents, because now Jack Rosenthal is working instead of Mr. Piasek?

Mr. Smith: If counsel wants me to speak on a charge that may be filed at a time in the future, I refuse to answer.

Mr. Perkins: I think we ought to smoke it out. It develops to a point of absurdity that isn't the respondents' own making. It again points up the

(Testimony of Eugene Piasek.)

government's position that whatever the respondents do is wrong. I think we are entitled to a fair and candid answer as to what the government is trying to do.

Trial Examiner Hemingway: Whether or not the respondent is guilty of the unfair labor practice in the case of Mr. Rosenthal is dependent upon whether or not there was work for two men. Insofar as the question of seniority may have been in issue, that might also be of some consideration. Now, if there is not work for two men at the present time, then, of course, as far as the seniority situation is concerned, that has been cured. But I don't think that it is fair to ask Mr. Smith to decide the question as to whether or not there is work enough for two men on the facts that are known—unknown, at this time.

Mr. Perkins: Well, I do think the respondents are [572] entitled to notice of the government's intention. I assumed from the case the government put on that it was the intention of the government to establish that Mr. Rosenthal should have been preferred to Mr. Piasek. If the government meant to contend that the employer should have hired two, when, in the employer's judgment, one would do the job, that might be another thing. But I think that is a matter of managerial discretion which the government doesn't ordinarily concern itself with, and I think we are entitled to a fair disclosure of the government's intentions here. What they may



(Testimony of Eugene Piasek.)

be doing is lying back and seeing how they fare in Mr. Rosenthal's case, and then if the Examiner holds, the Board holds, against them—against the government on that one—then they got another one in reserve to file, one for Mr. Piasek.

Now, I think we are entitled to a fair contention on the part of the government. We are trying to comply to some extent with what they want. What we are trying to find out is what they want.

Trial Examiner Hemingway: I will permit you to ask Mr. Smith what his intention is in this case. I won't require him to state what his position is in the possible future case.

Mr. Perkins: I would like to ask him to state when there is work for one, whom the government contends ought to do it?

Trial Examiner Hemingway: Let me amend that, if you will. Let me ask Mr. Smith whether, if there was enough work for only [573] one man, he would contend that the lay-off of Rosenthal was an unfair labor practice because of the fact that he had seniority over Mr. Piasek?

Mr. Smith: I certainly do. I wanted to correct the Trial Examiner's statement of a moment ago in that regard, insofar as it indicated it was a statement of the general counsel's position.

We think the Rosenthal case is a clear discrimination, wholly, regardless of the question of how many cutters were required, because of the circumstances of his discharge without pointing up all the separate items in evidence in that. I think the

(Testimony of Eugene Piasek.)

case is remarkable in completeness and persuasion. It is true that one month, roughly, after Rosenthal's discharge he was offered employment, but that was after the charge had been filed that he was offered his job back and that by his own testimony he indicated that he turned it down and three or four days later, I believe, he said he went back and tried to get in and at that time he was told there was no job there.

With respect to developments after that time, and especially with respect to anything developed today, I don't see how I can speak, because investigation has not been conducted. I certainly think the case is very strong at a minimum.

Trial Examiner Hemingway: I won't require you to speak on that. In other words, I don't expect you to make a statement [574] with regard to your position on a charge that isn't even filed.

Mr. Smith: Now, the Trial Examiner did indicate that perhaps it would be appropriate that I speak on my position of who should have the job if there is only one job. That problem itself is one that relates directly——

Trial Examiner Hemingway: That wasn't my question. That was Mr. Perkins question.

Mr. Smith: I don't say that this can be answered. I don't know. Counsel is the one suggesting the charge be filed. I have made no suggestion, nor has he been able to elicit anything from this witness that pertains to this question.

Mr. Perkins: I think we are entitled to know the

(Testimony of Eugene Piasek.)

government's position on who should have the job. I think when the government starts to prosecute these cases it's got some idea of accomplishing some results other than just needling the employer. We are trying, within certain limits, and as dictated by prudence, to do what the government wants. We are having difficulty in finding out what the government wants. I think we are entitled to be advised of that.

Trial Examiner Hemingway: Mr. Perkins, you are an attorney, it is your job to give advice and it is not the requirements of either counsel for the National Labor Relations Board of the Trial Examiner, or anyone else here, to advise you as to what is and what is not an unfair labor [575] practice.

Mr. Perkins: I might say with all respect it isn't a question of what is an unfair labor practice. I can give advice on that, but I can't advise myself as to what the contentions of the government are.

Trial Examiner Hemingway: You are asking counsel to make a contention on something that is not in issue in this case, and that is whether or not the suspension or lay-off of Mr. Piasek here is going to be regarded as an unfair labor practice.

Mr. Perkins: I might suggest that that isn't it precisely. I am trying to say, does the government contend that Mr. Rosenthal should have the job. Mr. Rosenthal is mentioned in the complaint as having been discriminated against and such dis-

(Testimony of Eugene Piasek.)

crimination is continuing on, according to the complaint, down to the present time.

Trial Examiner Hemingway: Again, Mr. Perkins, you're asking Mr. Smith to decide something on assumption of fact, and that is this, there is work enough only for one man. It may be that if that is established, Mr. Smith might say, "Well, yes; on that basis, maybe Mr. Rosenthal is the one who should have the job," but I wouldn't expect him to concede that point or draw that assumption at the present time.

Mr. Perkins: It seems to me that is the very minimum that he should disclose here. We are trying to minimize the liability and find out what the specific contentions are, and [576] decisions have to be made day by day in the employer's business.

I would assume from the whole tenure of the government's case that they were complaining because the employer chose to lay off Mr. Rosenthal, rather than Mr. Piasek. All right; now, then, we put Mr. Rosenthal back and let Mr. Piasek go, and now the government wants to study and see whether or not they can't try the other, work the other side of the street and still convict us of an unfair labor practice.

Mr. Smith: To show you how this is shaping up, my first word that Mr. Piasek has been discharged, or laid off, or whatever the company here wants to term it, came about 30 minutes ago, and counsel is trying on the record to get immediate commitment of what implications that recent development



(Testimony of Eugene Piasek.)

has in the case. Were the shoe on the other foot, were I to go in and try to amend this 8(a)(3) charge, I think the counsel might very well take the contrary position and complain of surprise.

Trial Examiner Hemingway: I don't think it is necessary to discuss this any longer. [577]

\* \* \*

### JACK LEWIS

a witness recalled by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows: [578]

### Direct Examination

\* \* \*

By Mr. Perkins:

Q. Calling your attention to the year 1952, did you secure information concerning the state of your health in the year 1952?

A. Yes; quite a great deal of it.

Q. What information did you get?

A. After quite a lot of check-ups and examinations with several doctors, including X-rays, blood tests and everything that goes with it, and having even been examined by Dr. Griffith in Pasadena, which happens to be the head professor of medicine from U.S.C., I was told I have an incurable disease called lymphoma of the spine, in short, deterioration of the bone structure of the spine, all the way through the body. They have found deterioration of the bone in the lower part of the spine and also in



(Testimony of Jack Lewis.)

the skull. I have three definite holes in the skull now.

Q. Have you recovered from that condition?

A. No; I have not recovered. I am on special diets and [580] care and special medicines and I took the full amount, full share of X-ray treatments that a person, a human being can take. They just tried to check it so that it will not travel any further, but that is about the extent that it is now.

Q. Now, did you receive any advice from any physician in 1952, as to whether or not you could or should continue your work at the same amount and degree as you had in the past?

A. Oh, yes; definitely. I was told to take it easy as much as I could possibly do. In fact, the doctor advised me, he said, "If you have enough insurance policies whereby it covers certain disability clauses, it would be perfectly in line to give you a letter to that effect, so that you can apply for this disability, you won't be in any condition to work at all in a very short period." In fact, he said it would be, the most he could think would be about two years.

I was advised if I can do that, to take it as easy as I possibly can and not to have too much aggravation and plenty of sleep and rest and take it generally as light as you possibly can.

Q. I think when the government called you as a witness, they asked you something about the lease on the premises on Los Angeles Street, occu-

(Testimony of Jack Lewis.)

pied by California Footwear. Did that lease expire some time in 1952?

A. No; that lease expired in February, 1953.

Q. I see. I think that answers that question. Now, the [581] next one is, before that lease expired, did you have information as to whether or not the landlord would be willing to renew at the same rate, or whether he wanted more money for a renewal?

A. I was advised that the landlord definitely wanted to have more money under renewal.

Q. Now, at some point you went out and arranged for space in Venice; did you not?

A. That's right.

Q. Now, will you tell us what it was that led to a decision to seek space in Venice?

A. Well, there were several all put together. Primarily, it was my health that I am concerned with and the doctor told me to take it easy, and being that I live out in Santa Monica and I have to travel every day back and forth to downtown Los Angeles, it was quite a great effort and, on top of it, the increase in rent that the landlord wanted for renewal of the lease made me decide that I should look for other quarters closer to home, space closer to my home, whereas I wouldn't have to travel every day downtown and come to the place later and go home earlier and generally take it a little easier.

Q. Did you have a discussion with Mr. Fellman

(Testimony of Jack Lewis.)

at any time about his manufacturing shoes to sell to California Footwear?      A. Yes; I did.

Q. And who brought up the subject of his doing that, did he [582] or did you?

A. Well, Mr. Fellman brought up the subject originally because in the state of mind that I was in at that time I was definitely, I definitely made up my mind in order for me to accomplish all these things and by the advice of my doctors, I decided to discontinue manufacturing altogether and move out close to my home.

Q. And you told him that?

A. Yes; I told Mr. Fellman and he suggested to me that if that may be the case and being that I knew him for a long time and know his capabilities and all, he suggested that he should make the shoes for me, providing, of course, that I am able to furnish him in a way that he should be able to operate.

Mr. Smith: Fix the date of the conversation.

Mr. Perkins: Yes.

Q. (By Mr. Perkins): Can you fix the date with reference to the time, for example, when you went to look for space, before or after or around that time, or when?

A. I would say about the same time, generally about the same time.

Trial Examiner Hemingway: I don't know when he started to.

Q. (By Mr. Perkins): When did you lease the space in Venice?

(Testimony of Jack Lewis.)

A. It was the latter part of November, 1952.

Q. And, I think that there may have been some testimony [583] earlier relating to December. Have you since checked to see when it was that you did lease the space in Venice?

A. Yes; I did check.

Q. Did you find it was—when it was?

A. It was late in November.

Q. In these discussions with Mr. Fellman, was there anything said about the situation of Trina Shoe Company, so far as its credit was concerned?

A. Oh, yes; we had discussed that.

Q. What was discussed?

A. Mr. Fellman gave me to understand that the present situation is in very bad shape. In fact, they had a chattel mortgage with the Bank of America on his equipment and several other creditors were pressing him for money, and in order to do any manufacturing for me, I would have to advance him some money for, to clear off his credit, some of his creditors, and also, to take over the chattel mortgage on his equipment from the Bank of America.

Q. Did you advance money so that he could pay off the Bank of America?      A. Yes; I did.

Q. And did you take a chattel mortgage yourself, that is, for California Footwear, on the same machinery?      A. That's right. [584]

\* \* \*

Q. Mr. Tutt testified, I believe, that at some

(Testimony of Jack Lewis.)

time or other, which he places in January, '53, he mentioned to you something about, "What about employees of California getting jobs in Venice?" and that you referred him to Mr. Fellman.

I will ask you whether or not you ever had such a conversation with Mr. Tutt?       A. Yes; I did.

Q. And did you refer Mr. Tutt to Mr. Fellman, to place employees in Venice?

A. I did. [585]

\* \* \*

Q. Mr. Tutt testified, I believe, that he asked you what would become—withdraw that.

He asked you "What about a contract for Venice?" and that you said he would have to see Mr. Fellman. Did that conversation take place?

A. That's right. [586]

\* \* \*

Q. Did you ever hire any employee to work in the production at Trina plant in Venice?

A. Not directly; no.

Q. Did you ever interview anyone for hire?

A. Yes; I interview quite a few.

Q. And to whom—would you send them to somebody?

A. Yes; I would send them after I was interviewing, I would send them over to Mr. Fellman to get all the information or instructions or whatever he has to offer.

Q. Who made the decision as to whether or not the person would be hired?

A. Mr. Fellman did.



(Testimony of Jack Lewis.)

Q. Now, did you ever have any conversation with Mr. Fellman about your interviewing for him on occasion? A. Yes; I did.

Q. And can you place, do you remember any particular conversation to that effect?

A. We had a conversation to that effect, being that if anybody came in to apply for a job, and being that I was more acquainted with the type of work and the type of manufacturing that was going on in this place here, I would more or less be able to judge from the conversation of the interview, or from [587] the experience of the applicant, whether they would fit in with this type of operation or not, and whatever information I obtained I turned it over to Mr. Fellman. [588]

\* \* \*

Q. Now, there was a girl here, I believe, a colored girl by the name of Parker that testified sometimes you instructed her what to do or how to do it, when she was working in the Trina factory in Venice, this year. Do you recall a Miss Parker?

A. Yes; I recall Miss Parker.

Q. Did you ever give her any instructions as to how to do the work?

A. Not in the sense, in the term of instructions. I may have showed her how to do something if I happened to notice that she wasn't doing it right. I just merely walked over and showed her the proper way of doing it, but not in the form of instructions. [590]

(Testimony of Jack Lewis.)

Q. Did you go into the Trina factory from time to time?      A. Occasionally.

Q. And did you observe the production that was going on?      A. I did.

Q. As far as you knew, was Trina devoting its entire production to orders from California Footwear?      A. That's right.

Q. Did you ever inspect the work in process in Trina plant, which was destined to go to California Footwear?      A. I did.

Q. Did you ever give Miss Parker any orders as to how she should do her work?

A. I never gave her any orders. I merely showed her how to do it on occasions. Sometimes if I seen she wasn't doing it right, which would result in a reject of some shoe or something, I merely pointed out this is the wrong way of doing it and showed her how to do it the right way. But at no time ever gave her any instructions. [591]

\* \* \*

Q. Mr. Piasek said that you used to pick up job tickets showing the amount of work turned out by piece-workers, and took them in the office so that they could figure wages. Did you ever pick up job tickets?      A. Yes; I did.

Q. Did you take them into the office?

A. Yes, sir; I did.

Q. Why did you do this, Mr. Lewis?

A. For one reason, I have plenty of time on my

(Testimony of Jack Lewis.)

hands in the office. I help figure out the payroll cards for Mr. Fellman at which time, which was usually done a few days before payday, anyway, and Mr. Fellman would check over my figures the following evening or following day. That was one reason, and the second reason, I had to determine how much money I would have to advance him for his payroll so I would know just how much money is required.

Q. California Footwear was supplying money for Trina to meet current payrolls with; is that true?

A. California Footwear was advancing the money for the payroll for Trina Shoe Company.

Q. It is your testimony, then, you needed to know how much [600] his requirements were to meet certain payrolls? A. That's right.

Q. That was one of the reasons why you picked up the job tickets? A. That's right.

Q. Mr. Piasek said on some occasion or other, when he thought his check was short he told you about it; is that correct; is that a fact?

A. That's right.

Q. What did you do about it after he told you about it?

A. After I took out all his work tickets and we went over the figures, Piasek and I, the figures and additions and multiplications and so on and if we found any error we adjusted it and we gave them the difference. [601]

(Testimony of Jack Lewis.)

Q. Has any decision been made by California Footwear as to what it would do as to getting a source of supply of shoes after the first of the year, in the event that Trina doesn't continue to supply them?

A. Yes; the decision on that is this: If Mr. Fellman terminates his contract with California Footwear Company and then California Footwear Company will try to do a little of manufacturing on its own until they will be able to find or locate somebody that will be able to take over the factory to do the manufacturing for the California Footwear Company.

Q. Has anything final been decided on that as to what will be done, exactly?

A. Well, that is the decision we will try to go on to do manufacturing on our own until we find somebody that will be able to take it over, take it off our hands.

Q. What about if you are able to find somebody to take up immediately at the first of the year, somebody that is satisfactory, would it be your plan that California would not do any manufacturing in that case?

A. No; California will not do any manufacturing if we are able to find somebody worthwhile and somebody satisfactory that can take over the manufacturing process from our hands.

Trial Examiner Hemingway: You mean in the same location?

(Testimony of Jack Lewis.)

The Witness: Yes. [606]

\* \* \*

Q. But you didn't move out to Venice solely because of the rent. You say a second item was transportation, which was connected with your health?

A. That's right; everything put together.

Q. Well, you say now, everything put together. What was there besides the amount of rent and your transportation problem?

A. Well, as I said before, my health condition and increase in rent and everything put together made me decide it.

Trial Examiner Hemingway: When you say "everything put together," are you thinking of anything more than those two things?

The Witness: No; primarily it was my health. That is the most consideration and the increase in rent. That was a contributing factor. No; I don't mean anything else, considering [610] everything together, I mean.

Q. (By Mr. Smith): Were you concerned about a cheaper labor market area?

A. I would like to find a cheaper market [611] area.

\* \* \*

Q. During the last three or four weeks, what has been Mr. Fellman's function about the plant, has he continued in general charge of the plant?

A. Well, he has continued as far as the general charge of the plant is concerned, except he doesn't



(Testimony of Jack Lewis.)

spend very much time in the plant. He has been out a great deal looking for another location for space available, so he can move out.

Q. Up until that time, or saying it differently, for the first nine or ten months of this year he has been spending full time in the Venice plant?

A. That's right.

Q. And through that same period you had been spending full time in that plant, also? [622]

A. As much as I was able to; yes.

Q. That amounted to something like four out of five days each week; did it not?

A. About, yes; sometimes three, sometimes four days a week.

Q. Mr. Levitan throughout the whole period, up until today, has been spending his full time in the plant? A. That's right.

Q. Mr. Albert Lewis, also?

A. That's right.

Q. You say Mr. Fellman has been out a good deal, looking in the past month?

A. About two or three weeks. [623]

\* \* \*

Q. In your dealing with Trina, were you the one who made the agreement to purchase shoes from Trina?

A. Yes; primarily. My partner had knowledge of it, of course.

Q. When you gave your specifications to Trina for shoes, did you also specify the price at which they would be paid?

(Testimony of Jack Lewis.)

A. The price they were to be made by Trina?

Q. The price you would pay Trina for [634] them?

A. Not specific, they were arriving at a general figure the particular style to be made at a particular price.

Q. Do you mean that each time you start a new style you get together with Mr. Fellman and talk about the price?

A. That's right. In other words, not all styles can be made for the same price.

Q. And did he and you decide at that same discussion what the price would be?

A. Yes; sometimes it was subject to revision, providing if we weren't a little too clear on it, and the figures might be a little off. Then what we figured, we make a little provision to have an adjustment after.

Q. Was there any fixed amount that was agreed upon as the value of technical advice?

A. In dollars and cents you mean?

Q. Yes.           A. No.

Q. Now, did that enter into the amount that you would owe Trina for the shoes that the Trina Company manufactured?

A. If a portion of technical advice entered into the general set-up, the advice that we were to give him we determine was part, well, you might call it, it might be a part of the price of the shoe, but we never did——

(Testimony of Jack Lewis.)

Q. Here is what I am trying to get at. If an accountant were to go over the figures, would he find the value of technical [635] advice in any specific place?

A. No. In other words, he wouldn't find a separate column or separate bill or separate item.

Q. So it wasn't set off to charge against the shoes? A. Not technical advice; no.

Q. What about that other, the use of your equipment that was also to be taken into account in fixing the price of shoes, was there any value set on that?

A. No; that was arrived at to use a certain portion of our equipment as he sees fit. If there is any rentals on that, why, he has to pay the rental on it. No rental was given as a separate rental for equipment of our own. In other words, the rental of the place we charged Trina for, covered the rental of the place and the utilities and the portion of the equipment that he found use for.

Q. Well, then, this clause in the agreement, General Counsel's Exhibit 4, paragraph 4, "In the event that buyer furnishes seller use of buyer's machinery, a reasonable allowance shall be made for the value of its use."

You say that that was not done, that it was actually thrown in free with the rent?

A. Well, it isn't free with the rent. I mean the whole thing was taken into consideration.

Q. Taken into consideration of what?

A. Of part and parcel of rent that we got for the space, but [636] it wasn't a definite loan-free.

(Testimony of Jack Lewis.)

In other words, if we would find somebody that would want to buy certain equipment or we could sublease to somebody else, we had a perfect right to take it out from there and give it to anybody we wanted to. In other words, it was free for him to use while it was standing there, but we were not obliged that it belonged to him, but he was to use it at all times. [637]

\* \* \*

Q. Did you ever see any of Mr. Fellman's figures, with respect to the cost of manufacturing and the price which he would have to get to make a fair margin of profit?

A. Yes; I have seen those figures.

Q. Well, now, did you take those figures and knock something off for technical advice and use of machinery, or just how was that done?

A. That was done generally into what you might call buyer and selling bargaining. I would offer a little less and he would compromise a little and he would compromise a little and arrive at terms, and that is the way we arrive on certain figures, so that both sides should be happy.

Q. Did you advance any money to Mr. Fellman, other than for the cost of operations?

A. No, sir.

Q. Can you explain to me how the amount advanced to Mr. Fellman has grown to something near to \$11,000.00, if he was being paid a price which would cover cost of operations?

A. Oh, yes; very simple. On merchandise that I bought, we charged off to Trina Shoe Company.

(Testimony of Jack Lewis.)

Money that he needed for payroll, we would advance the cash for it. On the other hand, [638] the merchandise that was made up, Trina would bill back to California Footwear and this portion would set off whatever the California Footwear Company charged to Trina or advanced in money. However, that was only applied when merchandise was finished. However, certain inventories that is in process and it was not cut yet, or did not go into process yet, and that money is not charged to California Footwear Company yet and this would still be on the Trina Shoe Company property and that is where a balance like that would arrive.

Q. Have you any idea how the balance would be affected by the completion of manufacture of shoes from whatever material is on hand at the present time?

A. It is really hard to tell, because you have to take accurate inventory and whatever merchandise has been made up since up to the present time and what he charged back.

Q. I don't want an accurate statement on that. All I am trying to figure out is this, if you utilized all of the leather and other materials on hand at the present time and wound up this contract, would it reduce that \$11,000.00 debt by half, two-thirds, or just rough proportion?

A. I think it would even up, or maybe come out a little—might even up, I think, I hope so, [639] anyway.



(Testimony of Jack Lewis.)

Q. When you paid the Bank of America, was that by your own check?

A. No; that money was advanced to Trina Shoe Company.

Q. That is what I am talking about. Did you have a list of the figures that totaled up to \$3,500.00 that you gave Trina, the money to discharge that amount?

A. There were a certain number of debts that would amount up to that figure.

Q. Do you remember any item, except the Bank of America note that entered into that?

A. Anything—by item, you mean big or small item?

Q. No; the big item is the Bank of America note. The item that goes to make up the difference between \$2,600.00 or \$2,800.00, whatever the Bank of America note was, and the \$3,500.00.

A. Yes; I think there were several. One of them, I think, was a month's back rental on his old location that he owed money to, and some of it was in taxes, portion of taxes, I think, that were coming on the one or one and a half per cent withholding that they had to meet that was falling due from his previous [642] Costa Mesa debts.

Q. Did the amount cover the cost of moving?

A. I don't recall. I don't think so, no; I don't recall. [643]

\* \* \*

(Testimony of Jack Lewis.)

Redirect Examination

By Mr. Perkins:

Q. One of the subjects the Examiner touched on here, in Los Angeles Street you have machinery which was leased from United Shoe Machinery and some other companies? A. That's right.

Q. That is over a definite period they are leased for?

A. Leased for a period of ten years.

Q. And not cancelable by you during that period?

A. Unless we pay off the full ten-year rental.

Q. So that as to machinery covered by a lease from United Shoe or somebody like that, that had some time to run; did you move that machinery to Venice? A. Yes; I did.

Q. And you let Trina use it? A. Yes.

Q. And who pays the rent on that to United Shoe Machinery? [644]

A. California Footwear pays rent to the United Shoe Machinery but California Footwear charges that portion of rent to Trina Shoe Company for the same amount.

\* \* \*

(Testimony of Jack Lewis.)

Recross-Examination

By Mr. Smith:

Q. You say you and Mr. Fellman had an oral agreement worked out with reference to the content of sublease and the other documents that you signed in January, and, I think, one of them somewhat later this year. I will ask you whether part of that oral agreement was the amount of rental that Mr. Fellman was to pay to you in connection with the sublease?           A. Yes.

Q. What was that amount?

A. The rental originally that we arrived at, I believe, would be \$250.00, but I think later we changed it orally between ourselves. We made it \$200.00. [645]

Q. Now, I call your attention to the fact that the sublease gives the amount of \$275.00 for the first two years and after that \$300.00. Was that the original agreement?           A. Yes.

Q. You say that later it was changed?

A. Yes.

Q. When? You mean after the writing was entered into?

A. After the writing was entered in, we changed it, that is, orally we changed it to \$200.00 a month.

\* \* \*

Trial Examiner Hemingway: Maybe I am confused on this, but let me see. I would like to ask whether or not that adjustment of the rent, orally,

(Testimony of Jack Lewis.)

was made on the basis of a division of space occupied by Trina and California Footwear.

The Witness: Part of it was. It went into the discussion [646] at that time that we were taking a little more space than we actually told him we would need, and with that in mind we agreed to lesser rent and didn't want to go through the trouble and another expense to rewrite the agreement, so we just agreed on an agreement for \$200.00.

Q. (By Mr. Smith): What additional space did you occupy, different than that set out in the sublease?

A. Not any more different space, but we were taking up more space by the inventory that we were keeping and boxes and cartons, and everything, they were taking up more space.

Q. I don't quite understand that. How much more space and where in the plant?

A. In the plant nearer to the portion of the plant nearer to the office and to the shipping. [647]

\* \* \*

Mr. Smith: I propose the stipulation that all of the machinery at California at the time of the move of the machinery from California to the Trina Venice location was moved and that no other disposition was made at that time of any of such machinery.

Mr. Perkins: That is correct.

I suggest the following supplement that as to the machinery which California Footwear had leased

from others as, for example, United Shoe Machinery, whenever the leases expired on machinery it was returned to the lessor and [654] further that at the time machinery was moved from California Footwear's plant on Los Angeles Street to Venice, the Trina operation was already under way with machinery brought from Costa Mesa.

Mr. Smith: Yes; that is agreeable.

\* \* \*

### MAURICE FELLMAN

a witness recalled by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows:

#### Direct Examination

By Mr. Perkins:

Q. Mr. Fellman, you are president of Trina Shoe Company?      A. That is correct.

Q. Have you been president of that company since its formation?      A. Yes.

Q. And Trina was formerly in business in Costa Mesa, California; was it not?      A. Yes, sir.

Q. That is in Orange County?

A. Yes. [655]

\* \* \*

Q. \* \* \* Did you go to work for California Footwear in the fall of '52?      A. Yes; I did.

Q. And doing what kind of work? [656]

A. Pattern work, sample work.

Q. At that time was the operation at Costa Mesa



(Testimony of Maurice Fellman.)

actively running or was it suspended or what as far as actual production was concerned?

A. It was suspended when I left.

\* \* \*

Mr. Perkins: I propose the following stipulation of fact in the belief that it will shorten presentation of evidence in eliminating extended examination of witnesses. The following figures are taken from a financial statement [657] of Trina as of August 31, 1952. Total assets were \$20,167.05; total liabilities were \$4,202.72. That leaves a book net worth of \$15,964.33. Now for some detail concerning assets, current assets are shown at \$9,229.27. Of that, cash in the bank is shown as only \$4.72. There are no other cash items included in the current assets. Fixed assets, \$6,466.29. That includes the item of machinery and equipment, the cost of which is shown at \$8,810.15.

The Witness: Excuse me, actually, that isn't the cost, it is the depreciative value at the time of the incorporation.

Mr. Perkins: I see. It was the evaluation placed on the machinery and equipment when it was transferred to the corporation.

The Witness: Yes.

Mr. Perkins: Then, there is a reserve for depreciation of \$3,389.84.

If I may ask the witness, that represents a further depreciation since the inception of the corporation; is that correct?

(Testimony of Maurice Fellman.)

The Witness: Yes.

Trial Examiner Hemingway: Is that the depreciation from \$8,810.00?

Mr. Perkins: Yes, since the inception of the corporation. The reserve is \$3,389.84, leaving a net depreciation value on August, 1952, \$5,420.31. Then there were other assets and [658] deferred charges amounting to \$4,471.49.

So that this will be understood better, I am reading the transcript, I will say the total asset figure of \$20,167.05 is a result totaling three subtotals, namely, current assets of \$9,229.27, fixed assets of \$6,466.29, and other assets and deferred charges of \$4,471.49.

Now, under liabilities, the total of which has previously been given as \$4,202.72, they include the following items, among others: notes payable the Bank of America, \$490.00; social security tax payable, \$455.26; withholding tax payable, \$740.36.

We will add to that the explanation it is our understanding the amount paid the Bank of America to release the chattel mortgage which it held on the equipment was this sum of \$490.00 with the possible addition of interest subsequently accruing.

Mr. Smith: That is to say subsequent to August 31, 1952.

The Witness: I don't think that is correct. It was a lesser figure.

Mr. Perkins: \$490.00

The Witness: Paid at what time?

(Testimony of Maurice Fellman.)

Mr. Perkins: Late in '52, whenever it was paid.

The Witness: You mean final payment to the bank?

Mr. Smith: Less than \$490.00; is that right?

The Witness: Yes.

Mr. Smith: We are satisfied with the stipulation in that [659] form.

\* \* \*

Mr. Perkins: Then the operating statement for the fiscal year ended August 31, '52, showed the following figures among others: Sales of finished shoes for resale, \$15,703.85. The operations for that fiscal year resulted in a loss of \$9,308.90.

All of these figures covered by this stipulation relate to operations of Trina at Costa Mesa.

Mr. Smith: So stipulated.

Q. (By Mr. Perkins): Now, there came a time when you moved [660] the operations and equipment of Trina from Costa Mesa to Venice; did there not? A. Yes, sir.

Q. And approximately when was the equipment moved? A. In December of '52.

Q. And when did production begin at Venice?

A. I would say within a week of the moving.

Q. Would that still be in December or January?

A. I couldn't pin it down, it would be one side or the other, slightly.

Q. Around the first of the year? A. Yes.

Q. Now, did you have a conversation with any of the, either of the partners of California Footwear before you moved your furniture, your equip-

(Testimony of Maurice Fellman.)

ment to Venice concerning your moving Trina's operation out there?

A. Have a conversation in regard to that, you mean?

Q. Yes.           A. Yes.

Q. Approximately when would be the first discussion that you had with them concerning the project of your moving Trina's operation to Venice, approximately?

A. I would say around the early part of December. [661]

\* \* \*

Q. What was your suggestion that you made when you first brought up the idea? [662]

A. It would be along the idea of Trina making shoes for California Footwear.

\* \* \*

Q. Were there later discussions on the same subject?           A. That's right.

Q. Where did you get the idea or what gave you the idea to suggest to them the project of Trina making shoes for California Footwear?

A. Well, I would say the whole general situation of both Trina and the situation that prevailed with Jack Lewis and Joe Levitan regarding their operation and it seemed to lend itself to the thought.

Q. What was there in Trina's situation that suggested the project?

A. The factory doing nothing, lack of [663] money.

\* \* \*

(Testimony of Maurice Fellman.)

and gave them to him and then he showed me the dues books and in looking at the dues books I found what seemed to me discrepancies and I said I was going to check them.

Trial Examiner Hemingway: Discrepancies on what?

The Witness: The fact that they were paid up dues books of people who were working at Trina where we had no checkoff; dues, to my understanding, are paid to a union through a checkoff. I went out in the shop and inquired of one of the dues book names if the book was in order and was told it wasn't.

Q. (By Mr. Perkins): Who did you ask?

A. Charles Quesenberry.

Q. Was his name on one of the dues cards shown to you? A. Yes, it was.

Q. You asked him what?

A. If he had paid his dues, was a paid up member and he said no. I believe Herlinda Hernandez was another and I asked if the two of them, they were quite friendly, I [679] asked if that applied to Herlinda also and he said it did. I went back to the office and Mr. Tutt told me I had no right to do this. [680]

\* \* \*

Q. Then he came back another time, did he, after that?

A. Yes, he came back very peacefully, surprisingly, and I said I thought you were going to come in getting tough which he seemed to have forgotten



(Testimony of Maurice Fellman.)

all about and asked about a number of employees again and I told him that I wasn't playing the game that way until they played the matter square as far as the thing that didn't look right to me was concerned and any other conversation was along the same order. [681]

\* \* \*

Q. Now, is the packing room part of the premises leased by Trina from California Footwear?

A. Yes.

Q. And how are the finished goods—withdraw that.

Are the finished shoes put in boxes before the delivery? A. Individual?

Q. Individual shoe boxes, yes? A. Yes.

Q. How are they moved to the point in the packing room where California Footwear takes delivery?

A. By rack or boxes.

Q. Just on hand truck, how are they actually, physically [699] moved? A. Carried, pushed.

Q. Anyway, there is no power machinery involved in it? A. No.

Q. Do those boxes of shoes, are they stacked up there in the packing room? A. Yes.

Q. And then does California Footwear remove them from time to time? A. Yes.

Q. Now, who does that for California Footwear for the most part? A. The individual?

Q. Yes. A. Mr. Levitan.

Q. Do Mr. Lewis and Mr. Levitan ever come into the part of the factory where the production is car-

(Testimony of Maurice Fellman.)

ried on?           A. Yes, they do.

Q. From time to time?           A. Yes.

Q. Would they observe the operations going on?

A. They would.

Q. Now, did they inspect the product as it was in process?           A. They did. [700]

\* \* \*

Q. Now, to your knowledge did Mr. Lewis or Mr. Levitan ever show any of the Trina employees how to perform a particular operation?

A. Yes, they have.

Q. Did you make any objection to that?

A. No, I did not.

Q. Do you have any opinion as to whether or not it was desirable from Trina's point of view that Mr. Lewis or Mr. Levitan would show Trina employees how to perform an operation? [701]

A. As a rule it would be. [702]

\* \* \*

Q. When Trina was shut down or when it had suspended operations in '52, did it have the working capital with which to resume operations?

A. No, that is why it was shut down.

Q. It didn't have, is that right?           A. Yes.

Q. Now, did you seek any source of credit, source of funds other than California Footwear in order to try to put Trina shoe back in production?

A. Yes, I did.

Q. And what source did you resort to for funds?

A. Banks.

(Testimony of Maurice Fellman.)

Q. Were you successful in that venture?

A. No, I was not. [703]

\* \* \*

Q. (By Mr. Smith): What was your understanding as of mid-December as to the amount of rent which you were to pay under the sublease?

A. The understanding at that time was the amount of rent that was charged to them was given to me and it was understood that I would pay a rent that would be proportionate to the space I would occupy so that it couldn't exceed the \$275.00.

Q. Was that proportion to be on a square foot basis?

A. I don't think anybody mentioned square foot, we just said the proportionate amount.

Q. As of the time that you signed the sublease in January of 1953, did you expect to occupy the entire premises? A. No, I didn't.

Q. I will ask you then why you signed a sublease for a payment of \$275.00 per month rent?

A. Why I signed it? [710]

Q. Yes.

A. The making of the sublease was done to charge me with the same terms, I would say, at least, that is the way I saw it so I would be subject to the same conditions that they were subject to in the master lease and the \$275.00 figure, I think, rubbed in. I didn't like it and I objected to it.

Q. You objected at the time of the signing, is that right? A. Yes.

(Testimony of Maurice Fellman.)

Q. Were you unsuccessful at getting it changed at that time?

A. No, I wouldn't say unsuccessful. We still had this agreement that I was to establish a rent on the basis of the space occupied.

Q. And you can't remember when that change was made, the reduction from \$275.00 to \$200.00?

A. That's right. I think it was right from the beginning.

Q. In other words, your first month's rent rate was at the rate of \$200.00?

A. \$200.00, yes, sir. [711]

\* \* \*

Q. Well, then, if they are to the extent that you recall such subject matter having been discussed, what was said between you and Mr. Jack Lewis?

A. What had been said was that there were certain employees at California Footwear who, if they could be available, I would like to have out there at Venice.

Q. Is this you talking or Mr. Lewis talking?

A. This is me. [712]

Q. Did you name certain individuals?

A. Yes.

Q. Who were they?

A. Blanche was one, Miss Blanche Roark.

Q. Go ahead, who else?

A. Ed Morris is another, Charles Quesenberry, Herlinda Hernandez. Those were the four that I was principally interested in.

(Testimony of Maurice Fellman.)

Q. I will ask you whether Annie Bell Stamps was another name that you mentioned?

A. I probably didn't mention her, no.

Q. How about Jesus Estrada?

A. Yes, I would have mentioned Estrada.

Q. Do you recall anybody else?

A. No, I don't.

Q. What did Mr. Jack Lewis say with respect to that question when you discussed it with him?

A. I don't recall because I don't recall discussing it. I say I know that this took place because they were people who were good workers and skilled on their jobs.

Q. Among others, you did actually employ at Venice Quesenberry, Hernandez, Stamps and Estrada, did you not?

A. That's right. [713]

\* \* \*

Q. Now, continuing with Blanche Roark, you testified to her coming out to the plant. I think you were not sure of the date but she testified it was February 9th. Does that sound [716] about right?

A. I couldn't say.

Q. But it was the trip out to the plant where she was accompanied by Mr. Tutt and by the Morris, is that correct?

A. That is correct.

Q. Ed Morris and his wife?

A. Correct.

Q. And in your direct examination you didn't tell us who was present at the precise conversation in which you said you offered her a job. Can you recall who else was standing there participating or



(Testimony of Maurice Fellman.)

overhearing the conversation besides yourself and Blanche Roark?

A. It seems to me that when the group first entered the office, I believe I was in the office when they entered, and I think that the whole thing opened that way with Blanche saying, "Have you got a job for me," or something of that sort. [717]

\* \* \*

Q. And all that you can tell me about the conversation concerning her going to work for Trina was simply her question of, "Have you got a job for me"?

A. Yes, and my telling her yes. [719]

\* \* \*

Q. As I understand your testimony, you stated on direct examination that California took over the shoes in the packing room. What is done with the shoes after the point of take-over, whenever that fine line is, what does California do with the shoes?

A. Ships them.

Q. And how is that shipping handled now with respect to any physical operation with respect to any employee, do they perform any operation with respect to the shipping? How is that done?

A. The making of the shipments, the selling of the boxes?

Q. Yes, who performs all those operations until the time the shoes are out of the factory?

A. Joe Levitan, I would say.

Q. Does he handle all of that?

A. He handles all of it, to my knowledge.

(Testimony of Maurice Fellman.)

Q. You mean all the packing of the shoes?

A. I am talking about the placing in the cartons, the [762] selling of the cartons

Q. He does all of that work?

A. Yes. [763]

\* \* \*

Q. During the last three weeks have you hired any employee at Trina?

A. In the last three weeks?

Q. Yes.

A. In the last three weeks, I don't believe that I have interviewed any.

Q. Well, I want the question to go beyond interviews. I am getting at any part of the hiring process.

A. I have checked over everything that has happened.

Q. You have approved certain hirings after the fact of their being made, is that correct?

A. That's right.

Q. How many cases?

A. There have been possibly four or five.

Q. Were all of those four or five individuals put on the [769] payroll, or hired, by a particular individual out at the Trina site?

A. I don't know whether they were hired by a particular individual, say, either Joe or Albert, possibly.

Q. You don't know the details about the four or five but it is your judgment that all those people were hired by either Albert Lewis or Joe Levitan?

(Testimony of Maurice Fellman.)

A. Put on by one or the other. [770]

\* \* \*

Q. Have you given any consideration to continuing your manufacturing operations at the site of your present plant [775] but in some arrangement other than a buy and sell agreement with California?

A. Yes, I have given the whole thing a lot of thought and I will say at this point, I haven't really come to any definite conclusions, not even to a real definite conclusion as to discontinuing the agreement with California Footwear. I have some definite thoughts as to what I want to do in the future if they can be worked out.

Q. You still owe a considerable balance to California in your dealings between the corporations, is that correct?

A. I wouldn't call that considerable. I don't know the exact figure right at present.

Q. You have testified that you terminated Martin Zell. Any other terminations that have occurred during the last three weeks have been effected by either Albert Lewis or Joe Levitan, is that correct?

A. Yes.

Q. And there have been some subsequent, is that not also correct?

A. That's right.

Q. During this three weeks period—strike that.

During those days during this three weeks period when you have been absent either for a whole day or a part thereof who have you left in charge of the factory?

(Testimony of Maurice Fellman.)

A. Albert Lewis has been in charge. [776]

\* \* \*

Q. Let me ask this, during the first three or four months of this year but after the California machinery was moved over to Trina there were a good many of the machines that were idle for some time, isn't that right, because of excess of machinery at the Trina plant? A. Yes.

Mr. Smith: That is all.

Trial Examiner Hemingway: Do I understand by that that you mean duplication of machines?

A. Not necessarily. Machinery that is idle because its use is not required in the particular items at the moment for various reasons.

Q. Were there duplications, too?

A. There were duplications also, principally duplications in lease equipment.

\* \* \*

Trial Examiner Hemingway: Do you mean the equipment you were leasing from California or California leasing from somebody else?

A. California was leasing from somebody else.

Q. And were you paying the rental for those machines at Trina? [782]

A. At the present location?

Q. Yes. A. Yes.

\* \* \*

Q. Was there any reason why it was necessary for you to move from Costa Mesa under a sales agreement, couldn't you have manufactured the same shoes at Costa Mesa?

(Testimony of Maurice Fellman.)

A. I believe it could have but perhaps not agreeably to all the parties.

Q. Well, if I understand you correctly, you are saying that you could have manufactured the shoes but California wanted an arrangement whereby it would be manufactured [783] at Venice, is that right?

A. They wanted an arrangement whereby they could have a closer inspection of the work.

\* \* \*

Q. I was just wondering whether or not that should be—strike that.

When you manufactured shoes as Costa Mesa how did you figure the price that you had charged for them?

A. Well, the general way you figure your price is by figuring the amount of material that would go into a pair, [784] the cost of the material, the price of the labor, the amount of anticipated production with the overhead to be offset.

Q. Did you have in mind any exact overhead figure?      A. At Costa Mesa?

Q. Yes.      A. Yes.

Q. And did that include an allowance for depreciation of equipment?

A. In basing my cost?

Q. Yes.

A. I didn't take it too much into consideration, I would say, that is, not in the last year, let us say.

Q. Do you recall how many times you had to



(Testimony of Maurice Fellman.)

deal with California with respect to the price of shoes which you were manufacturing during the period of 1953?

A. The number of occasions on which a price had to be set?

Q. Yes.

A. Well, let's see, at the beginning there was one meeting at which a number of shoes were agreed upon as to price. Repeatedly throughout the year there were new shoes and new prices.

Q. When there was a new type of shoe that came in who would be the first one to broach the subject of price?

A. I would say that Lewis put the question to me.

Q. Just how would he put it? [785]

A. Well, there would be occasions where he would bring in a shoe and would ask me what it would cost to have it duplicated.

Q. Did you do any calculating before answering or did you just give him a snap answer?

A. Before any definite price, yes, there was always a certain amount of calculating by comparison of a particular shoe with another in the same general category that I was pretty well familiar with that I would be able to give a snap price subject to possible differences one way or the other.

Q. Were you able to give the snap price because of some prior experience you had had at Costa Mesa with the same type of shoe?

(Testimony of Maurice Fellman.)

A. It would depend on the type of shoe. If it were a shoe of the type that I had made in Costa Mesa, naturally, I would draw on that experience.

Q. In other words, you would fix a price comparable to a price that you had once used in Costa Mesa?

A. Oh, no, not fix. You were referring to a snap estimate but the fixed price——

Q. You state the price wouldn't be fixed until it was pretty thoroughly analyzed? A. Yes.

Q. Well, who did the analysis? [786]

A. Myself.

Q. What did you take into account in figuring that?

A. The amount of material that would go into an average pair, the price of that pair together with all those costs that attended to it, transportation, outside labor, and then the various operations that would enter into the manufacture of the shoe with an estimate, of course, for each operation and totaling of these items.

Q. In other words, you gave Mr. Lewis a price based upon cost? A. Based on cost, yes.

Q. Well, did you include anything else in your figuring of the price?

A. Yes, all the cost of the shoe.

Q. Have you named everything that went into the price, that is what I am asking.

A. No, there is the profit to be anticipated.

Q. Did you have in mind any particular figure by way of profit?

(Testimony of Maurice Fellman.)

A. Yes, it was a happy figure to be looked for. Sometimes you make it, sometimes you don't.

Q. I am just talking about computation for price that you are going to ask. When you get all through figuring up the cost, then do you add a certain percentage by way of profit and then come up with the final figure?

A. No, in this case, in the dealings with California [787] Footwear it did not deal with percentage because it was a smaller item than that, it would be a smaller item than that anticipated profit.

Q. I don't understand what you mean.

A. By percentage, if you brought it down to percentage, it might be two, one, or perhaps even less in percentage and working was that close.

Q. Was that a lesser percentage than you used when you were figuring prices at Costa Mesa?

A. Yes. [788]

\* \* \*

## ERNEST TUTT

a witness recalled by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows:

\* \* \*

## Direct Examination

By Mr. Perkins:

Q. And the request was to bring from the union's records copies of any and all correspondence during the year 1953 addressed to employees of Trina Shoe Company in any way concerning possi-

(Testimony of Ernest Tutt.)

ble union discipline of those persons. Is that what you understood to be the scope of the request?

A. That's right.

Q. And have you produced the documents requested? A. Yes, I have.

Q. They are contained in this folder?

A. They are.

Q. Which includes four sets, copies of letters, each [795] stapled together, that is, each set stapled together? A. That's right.

Q. The addressees are Jesus Estrada, Herlinda Hernandez, Charles Quesenberry and Annie Bell Stamps, are they not? A. That's right.

Q. Now, the file contains copies of four letters, each to a different addressee and dated March 30, 1953, does it not? A. It does.

Q. The text of the letters dated March 30th, is identical except for the name and address of the addressee, is it not? A. That's right.

Mr. Perkins: Mr. Examiner, may I read this rather short letter into the record? We are trying to hurry up here.

Trial Examiner Hemingway. Let the reporter copy it.

Is there any objection to that being in evidence?

Mr. Smith: I think it's immaterial and that would be our contention in argument but I won't object to it coming into the record.

(The following letter was copied.)

(Testimony of Ernest Tutt.)

“Charles J. Quesenberry,

“356 Mariana Street,

“Puente, California.

“Dear Brother Quesenberry:

“Many members of the organization are now demanding that the union take immediate and [796] drastic action against you as a union member because of your failure to aid the union in any way whatsoever in its dispute with the Trina Shoe Company (California Footwear) Company.

“Charges of this nature if proven would constitute a very bad mark on your record and could mean a stiff penalty or even expulsion from the union.

“I have temporarily been able to get the members to hold in abeyance any formal written charges against you because I have told them I intend to talk over this situation with you.

“I would therefore like to meet you at union headquarters on Wednesday, April 1st, at 6:00 p.m.

“I trust you will be here so that this matter can be adjusted.

“Fraternally,

“ERNEST TUTT,

“International Representative.” [797]

\* \* \*

Q. (By Mr. Smith): Carrying that one step further, have these four individuals ever been suspended for nonpayment of dues or any other reason?

A. They were later suspended.



(Testimony of Ernest Tutt.)

Q. At what time?

A. That would be sometime during the summer of this year, approximately July.

Q. For what reason were they then suspended?

A. Because they were no longer in good standing as union members.

Q. And why were they no longer in good standing?

A. Because their dues had not been paid for several months after February and March. [799]

\* \* \*

### ALBERT LEWIS

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows: [813]

\* \* \*

### Direct Examination

By Mr. Perkins:

Q. There is testimony on this record that at various times that Mr. Fellman has been away from the plant that you had [819] been in charge of the plant, is that correct? A. That is correct.

Q. That has been especially true in the last month, has it not? A. Yes, it has.

Q. I mean by that that Mr. Fellman's absence from the plant had been more frequent in the last month than they were in the several months before that? A. Yes, sir. [820]

\* \* \*

JOSEPH LEVITAN

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

\* \* \*

Direct Examination

By Mr. Perkins:

Q. Mr. Levitan, you are one of the [826] partners of California Footwear? A. Yes, I am.

Q. Were you a partner when California Footwear was in the manufacturing business on Los Angeles Street? A. Yes, sir.

Q. Now, are you a, have you been engaged in operations of California in Venice?

A. California Footwear Company?

Q. Yes. A. Yes.

Q. What has been your work at the Venice location?

A. My work has been principally in taking over the shoes manufactured by the Trina Shoe Company, designing them, packing and supervising so that they go out in the proper shape. Also, in helping, assisting Mr. Fellman in any shape or form he may see fit.

Q. Do you inspect the shoes manufactured by Trina for California Footwear?

A. Yes, I do inspect them through every stage. By this, I mean I would discuss the shoe with Mr. Fellman and ask him whether the cutting was done right and whether the stitching was done right, every step; whether the cementing was done right. You could see me go over in the place and lift up

(Testimony of Joseph Levitan.)

a pair of shoes when there was a half hour's work done on them and examining them to see whether the stitches were right or [827] whether the size was marked right and I would go over to Mr. Fellman and ask him what it's all about, if it would come out all right or if it wouldn't come out all right to avoid rejects later on. When they can be repaired is when they are still in process but not later on.

Q. So you did perform inspection at times on the production line?           A. Yes. [828]

\* \* \*

### MAURICE FELLMAN

a witness recalled by and on behalf of the General Counsel, having been previously duly sworn, was examined and testified further as follows:

#### Direct Examination

By Mr. Smith:

Q. Mr. Fellman, you are acquainted with the fact of recall of Jack Rosenthal to work for Trina Shoe Company?           A. Yes, I am.

Q. On November 21st, is that correct?

A. That is probably the date. I am acquainted with the facts.

Q. Was that recall by a telegram?

A. That's right.

Q. And did you send that telegram to Mr. Rosenthal?           A. Yes, I did.

Q. Was it your idea to recall him to work?

A. On the advice of counsel.

(Testimony of Maurice Fellman.)

Q. By counsel, do you refer to Mr. [936] Perkins?  
A. Yes.

Q. Will you describe for me each and every conversation that you had with Mr. Perkins or with Mr. Lewis or Mr. Levitan that preceded your sending this wire that related to calling Mr. Rosenthal back to work; first of all, what conversation did you have with Mr. Perkins?

A. Well, the conversation, as I recall, wasn't a lengthy one, just a question of what to do about putting the cutter back to work.

Q. When did this conversation take place?

A. I don't recall the date.

Q. Can you place it as best you can, how many days before the date of the wire?

A. I believe it was the same day.

Q. The same day. Was the conversation by telephone or in person?  
A. In person.

Q. Where did it occur?

A. In the office of the Trina Shoe Company.

Q. Who was present?  
A. Mr. Perkins.

Q. And yourself?

A. Myself and Mr. Lewis was there.

Q. You refer to Mr. Jack Lewis?

A. That's right. [937]

Q. Anyone else?  
A. I don't believe so.

Q. First of all, was this the only conversation you had with either Mr. Jack Lewis or Mr. Perkins about the matter of recalling Mr. Rosenthal?

A. Yes.

Q. Explain what was said and by whom?

(Testimony of Maurice Fellman.)

A. It was a very brief thing, a question of who to hire and who to call back for the cutting and asking Mr. Perkins if he thought it advisable to call Mr. Rosenthall back.

Q. Who asked Mr. Perkins? A. Myself.

Q. You asked him who to call back?

A. Yes.

Q. And what did Mr. Perkins say?

A. He thought it advisable to call Mr. Rosenthall back. [938]

\* \* \*

### EUGENE PIASEK

a witness recalled by and on behalf of the General Counsel, having been previously duly sworn, was examined and testified further as follows:

\* \* \*

### Direct Examination

By Mr. Smith:

Q. Beginning in that period and through the next month or two, did you make any trips to the Trina plant to seek work?

A. Yes, I was a couple times over there.

Q. In the month of October did you make any such trips? A. Yes.

Q. On what date in October?

Mr. Perkins: What was the answer?

The Witness: Yes, I made a couple trips.

My first trip was October 23rd—it was a week before October 23rd, my first trip.



(Testimony of Eugene Piasek.)

Q. (By Mr. Smith): And did you make another trip on October 23rd? [956]

A. That's right.

Q. On October 23rd did you talk to any company supervisor or representative?

A. Yes, I did talk to Mr. Maurie Fellman.

Q. Go ahead and tell us to whom you talked and what was said.

A. When I came in the factory at October 23rd, this was on a Friday and Martin Zell was on the cutting machine, he was cutting. So I came in the factory and I have seen Maurie Fellman there and I talked to Maurie Fellman. It was a week before the October 23 Mr. Jack Lewis told me to quit my job at Artercraft Shoe Company. He said they want me to work the following week and so I did. I quit my job at Artercraft Company.

Trial Examiner Hemingway: As of what day?

The Witness: As a week ago of October 23.

Trial Examiner Hemingway: October 16th?

The Witness: That's right, October 16th.

Trial Examiner Hemingway: Was it before the 16th that you talked to Mr. Lewis?

The Witness: That's right, it was a couple days before the 16th.

Q. (By Mr. Smith): Go ahead and explain what was said on the 23rd?

A. I quit my job and came in the 23rd of October, to the Trina Shoe Company, and I have seen another cutter standing on my machine and working. So I came in and talked to Maurie [957] Fell-

(Testimony of Eugene Piasek.)

man and said, "Listen, Maurie, Jack Lewis told me to quit my job and today I come over and he hired another cutter."

Maurie said, "To my knowledge, I know Jack Lewis didn't hire him as a cutter. He hired him as a supervisor."

But, he said, "Go in and talk to Jack.

I went in the office and talked to Jack Lewis. I said, "Jack, you told me to quit my job and I quit my job and now you hire another cutter," and I said, "He is working on my machine."

So Jack Lewis said, "I didn't hire him as a cutter. I just hired him as a supervisor. He is not a cutter."

When I talked with him, then, he said I should wait in the office for a few minutes and he will go and talk with somebody. In the meantime, Albert Lewis came into the office and he said to me, "You see, Gene, my father didn't want to take you back but I made him take you back."

Trial Examiner Hemingway: What date was this now?

The Witness: October 23rd on a Friday.

Trial Examiner Hemingway: And the conversation with Mr. Fellman and Mr. Jack Lewis that you related were also on the 23rd?

The Witness: That's right, and, "I made him take you back," he said. And in the meantime Jack Lewis came back in the office and he said, "O.K., Gene, call me tomorrow on Saturday and I will tell you when you have to come in." [958]

(Testimony of Eugene Piasek.)

I called him on Saturday morning and he told me that it would be O.K. for me to come in Monday morning to start to work and so I did.

Q. (By Mr. Smith): And for what period of continuous days did you start work that Monday, October the 26th?

A. I worked from October 26th the whole week.

Q. Was that a five-day week?

A. Five-day week. And I started on the next Monday and worked until Wednesday evening.

Q. And were you cutting through that period?

A. That's right, I was cutting. [959]

\* \* \*

Q. (By Mr. Smith): Did you work any at all at the plant after that day, November the 5th?

A. No, I did not. [960]

Q. I call your attention to the following week which begins November 9th and I will ask you first whether you were present in the hearing which was being conducted in this room any days of that week?

A. Yes, I have been.

Q. What days did you so attend the hearing?

A. On Tuesday, Wednesday was a holiday, I was on Thursday and Friday.

Q. So you were here the three days, Tuesday, Thursday and Friday?

A. That's right.

Q. And were you here through the full course of the hearing on those days?

A. Yes, I was.

Q. Did you have any conversation with Mr. Jack Lewis during this week, that is the week of November 9th?

(Testimony of Eugene Piasek.)

A. Yes, on Wednesday when it was a holiday I went down to the shop, to the factory. Martin Zell was cutting as usual and I said, "Hi" to the boys and then Jack Lewis called me into the office. He said, "Gene, why do you have to testify against me?"

I said, "Listen, Jack, you do such unfair labor practice over here," I said, "everybody wants to testify against you. This is the truth."

I said, "You told me to quit a job. I am a [961] cutter, then you hired Martin Zell and put him on the cutting machine and you dismissed me," I said to him, "which it isn't fair."

He said, "Why didn't you tell me?"

I said, "You're the boss, I am just the employee. I can't tell you what to do."

So he said, "I will fire him the end of this week."

Q. Him, referring to whom?

A. To Martin Zell.

Q. Did you have any other conversation with Mr. Jack Lewis this week?

A. Yes, on Friday morning when we came over to here to the hearing room, Jack Lewis asked me if I would be able to start cutting on Monday. I said if I would be called to the hearing today I will be able to start working on Monday. If not, I will start working on Tuesday.

Q. Was that the full conversation that occurred at that time?           A. Yes.

Trial Examiner Hemingway: What day was that now?

(Testimony of Eugene Piasek.)

The Witness: That was on a Friday, November 13th.

Trial Examiner Hemingway: November 13th?

The Witness: That's right.

Q. (By Mr. Smith): Calling your attention to the fact you did testify on Monday, the first day of the next week, I will ask you what was the date of your next trip to the factory, if any? [962]

A. My next trip was on Tuesday morning like I told Jack Lewis. I came over on Tuesday morning to the factory and as I walked in from the office to the packing room, Joe Levitan had seen me come in so he came in running, he wouldn't let me go into the factory. He said, "Listen, Gene, we don't need you now. If we need a cutter we will call you."

\* \* \*

Q. What was your next trip, if any, to the factory?

A. My next trip was a week later. It was on Monday morning. I came in and I have seen Jack Rosenthall working, cutting. I went over and we talked and it didn't bother me that he was cutting there but it bothered me one thing, if they wanted to fire me why didn't they tell me a week ago. [963]

\* \* \*

Q. What did you do next?

A. My next step was I came over here to the Labor Board.

Q. And on this day did you have any conversation with Mr. Fellman in this room?



(Testimony of Eugene Piasek.)

A. When I came over here it was about 2:30. It was a recess at this time here, or 2:30 or 3:00 o'clock in the afternoon, and Mr. Fellman was here. Everybody was out and I said to Maurie, "Listen, Maurie, how come you fired me?"

He said, "Mr. Perkins called me over. It was Friday or Saturday, he told me to send a telegram to Jack Rosenthal."

This was the conversation. [964]

\* \* \*

### JACK LEWIS

a witness recalled by and on behalf of the General Counsel, having been previously duly sworn, was examined and testified further as follows:

### Direct Examination

\* \* \*

By Mr. Smith:

Q. I will ask you if in that telephone conversation with Mr. Greenberg you made to him a statement approximately as follows, "Maybe we will get together again in a week or two and you can go to work for me." [997]

\* \* \*

The Witness: In essence it might have been but in actual conversation did not. He just wanted to know what was doing in the plant and if we were busy and so on and so forth and did we straighten it out as far as the union was concerned and I told him that we were in the midst of the hearing right now and I couldn't very well tell him one way or

(Testimony of Jack Lewis.)

the other and that is all. That was the entire conversation. That is my recollection.

\* \* \*

Q. (By Mr. Smith): Has the arrangement between California and Trina been severed as of this date? A. Yes.

Q. Was that severance about the first of January of this year? A. Yes, that's right.

Q. Is there at present any financial obligation from Trina [998] to California, money still owed California? A. That's right.

\* \* \*

Trial Examiner Hemingway: I would like to ask on what account is that money owed?

The Witness: On what account?

Trial Examiner Hemingway: For what purpose?

The Witness: For merchandise billed to the Trina Shoe Company. [999]

\* \* \*

## RICHARD A. PERKINS

a witness recalled by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows: [1010]

\* \* \*

The Witness: I testified to that. Yes, we will stipulate to it if you like.

Trial Examiner Hemingway: Respondents' Exhibit 19 is received in evidence.

(Testimony of Richard A. Perkins.)

(The document heretofore marked Respondents' Exhibit No. 19 for identification was received in evidence.)

Trial Examiner Hemingway: Is there a copy of that available that you can supply, Mr. Smith?

Mr. Smith: Yes.

The Witness: \* \* \* Before Piasek was replaced with Rosenthal, I was aware of the contents of the complaint which, to my present recollection, contained the standard language that the respondents had discriminated and were still discriminating against Rosenthal within the meaning of the Act and thereby committing an unfair labor practice. Now, the record, of course, shows what Rosenthal's testimony was regarding the [1013] offer of reinstatement having been made him. There was testimony about his going back a few days later and not being able to get employment and, of course, I was here and I heard that. There was no indication at the time either in or out of the hearing to me to the effect that the Government was not claiming reinstatement for Rosenthal and to my consideration of the matter I had regard to an incident that occurred in another case because that has a bearing on the advice which I gave. [1014]

\* \* \*

We had a meeting in the premises on Main Street in Venice on Sunday, I believe, it was a Sunday before Rosenthal was called back. [1015]

\* \* \*

(Testimony of Richard A. Perkins.)

The Witness: That was around the 20th of November, I think. I think it was a Sunday, I know it was on a week end because that is the only time I can get out of that plant.

The question of putting a cutter to work came up. I don't recall exactly how but I think I probably asked in view of the testimony going on here whether there was any work for a cutter and, if so, what kind of material they were running. They said, Mr. Fellman said, as I recall that, and possibly Mr. Lewis, also, that the Trina plant was running some plastic, was cutting plastic and I asked whether there was any leather to be cut in the immediate future. The answer I got was that there probably would not be.

I recalled that the Government had tried to make out here that Rosenthal was as good a cutter as Piasek or, rather, that there wasn't enough leather cutting to amount to anything and I considered whether my professional duty to the respondents might not be best served by advising them that Trina should take Rosenthal back. [1016]

I asked if anyone knew how to get in touch with Rosenthal and somebody had a record somewhere of a phone number as to how to reach him. I said to Mr. Fellman I would advise that you recall Rosenthal and if there was only work for one cutter, let Piasek go if necessary. [1017]

\* \* \*

## JACK LEWIS

a witness recalled by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows: [1046]

\* \* \*

Q. (By Trial Examiner Hemingway): Mr. Lewis, referring to the testimony at the hearing of November, I believe it was where the incident was brought up about your parking your car across the street from the meeting place of the union.

A. Yes. [1050]

\* \* \*

Q. Which one of you spoke first when he came by you?

A. Oh, he just walked over, walked out from the car and along the sidewalk and stopped right off and asked me what I am doing. I said this man was from Passaic, New Jersey, and was looking around, he was a shoe man looking the territory over and just sitting and talking. The man was waiting for a bus. And I said what are you doing here and he said well I am [1052] going to a meeting across the street.

Q. Did Mr. Piasek have to lean over to speak to you?

A. No, he just leaned on the car door when the car door was open. He was standing there and I was sitting at that time in the car. We had, oh, maybe a five, six minute conversation, just general conversation, nothing of any importance. I mean, as



(Testimony of Jack Lewis.)

far as the work or the union or anything like that, just general conversation.

\* \* \*

Trial Examiner Hemingway: Has any arrangement been made with Mr. Fellman as to the manner in which the Trina deficit will be cleared up?

A. Well, the understanding is this here, whatever money, I haven't got the exact money yet because the accountant is figuring out the closing of the books of December 31st and he will be around sometime this week and figure out exactly and whatever, the understanding is such that we still hold the chattel mortgage on the equipment of Trina Shoe Company and continue to hold that chattel mortgage on it until all the money is paid. [1053]

\* \* \*

### Cross-Examination

By Mr. Smith:

Q. The lease was canceled without any obligation on either side?

A. You mean as far as the lease is concerned?

Q. Yes.           A. The lease, yes.

Q. So the only remnant that remains of the organization is the chattel mortgage and the debt in an unspecified amount?

A. At the present time unspecified, it is specified as far as the books are concerned. The only thing that has to be computed to determine a total.

Q. Only the debt and the chattel mortgage remain in any relationship between California and Trina?

(Testimony of Jack Lewis.)

A. What do you mean, I don't understand.

Q. Is your working arrangement between the two companies [1054] otherwise at an end and except for the debt and chattel mortgage?

A. That is all.

Mr. Smith: No further questions.

Q. (By Trial Examiner Hemingway): Do I understand California is now operating a plant on their own account? A. It is not operating.

Q. It is closed down?

A. As far as work is concerned.

Q. Is that a temporary matter?

A. Well, it might be called temporary or it might be called—until we make some other arrangements.

Q. What is the reason for being shut down?

A. Quite a number of reasons, business conditions, we are negotiating, trying to negotiate with somebody else to see if they can run the plant for us under a satisfactory arrangement, and business in general and that is just why we are standing still with nobody working.

Q. If business conditions improve, are you going to wait until you get somebody else to run the plant?

A. Yes, if we get hold of somebody satisfactory, somebody worthwhile, if we can come to decent arrangements, we will make an arrangement on the same order. If not, we might consider to run it ourselves again. Our mind isn't exactly made up which way the factory is going to operate. [1055]

HERMAN GREENBERG

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

\* \* \*

By Mr. Smith:

Q. Mr. Greenberg, have you ever worked for California Footwear at their downtown Los Angeles address? A. I did.

Q. In what period?

A. I worked until '53. I worked about close to three years.

Q. Ending about what month and year?

A. I think January, January of 1953.

Q. What was your work during that period of time? A. Cutting. [1062]

Q. Did you do any other work in that time?

A. No.

Q. Did you work steadily during that three year period? A. Mostly.

Q. Were you the only cutter in that period?

A. In the busy time we used to get help out, most of the times I used to work myself.

Q. Did you have any telephone conversation with Mr. Jack Lewis in November of 1953?

A. Yes, November 14th at 10:00 o'clock I had a telephone call from Jack Lewis.

Q. What day of the week was that?

A. On a Saturday.

(Testimony of Herman Greenberg.)

Q. And did you make the call or did he?

A. He called me.

Trial Examiner Hemingway: Would you read that question, please?

(Question read.)

Q. (By Mr. Smith): Did he call you at your home or at some place else? A. Home.

Q. Tell us what was said by you and he.

A. He asked me if I was working and I said I am working and then I asked him if he straightened out with the union and he said we expect to get straightened out the beginning of next [1063] week so I may return and we may get together again.

Trial Examiner Hemingway: Will you read that, please?

(Question read.)

Trial Examiner Hemingway: Is that what you said?

The Witness: No, what he said.

Q. (By Mr. Smith): Was anything else said?

A. Then I said that I expect to hear from him.

Q. Was that all of the conversation?

A. Yes. [1064]

\* \* \*

Received January 14, 1954.

## GENERAL COUNSEL'S EXHIBIT No. 3

August, 1953, Advances and Expenditures

Trina Shoe Co.

## Advances Received from California Footwear Co.

August 5 .....	\$1000
August 12 .....	\$1600
August 18 .....	\$1000
August 26 .....	\$1000

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Total .....	\$4600
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## Expenditures\*

August 8 (Payroll) .....	\$1042.28
August 10 (Taxes) .....	364.88
August 14 (Payroll) .....	967.41
August 21 (Payroll) .....	646.64
August 26 (WT and FOAB) .....	767.68
August 26 (Welfare) .....	79.50
August 28 (Payroll) .....	533.90

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Total .....	\$4609.62
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Bank Balance at End of August.....\$ 96.60

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\*Four miscellaneous items totaling \$207.33 are not included in breakdown but are included in total.

Received in evidence November 10, 1953.



## GENERAL COUNSEL'S EXHIBIT No. 4

## Agreement to Buy and Sell Footwear

This agreement, made at Los Angeles, California, January 2, 1953, by and between Trina Shoe Company, a California corporation, hereinafter called Seller, and California Footwear Company, a co-partnership, hereinafter called Buyer, witnesseth:

1. Seller agrees to sell to Buyer and Buyer agrees to buy from Seller all of the shoes, slippers, and other footwear required by Buyer in its merchandising operations during the calendar year 1953.

2. Seller agrees to sell Buyer shoes, slippers, and other footwear according to Buyer's specifications, which shoes, slippers, and other footwear shall conform to production samples as to material, quality, and workmanship, and shall be subject to rejection for defective material, quality, or workmanship by Buyer or any of its customers. Seller agrees to replace such rejected shoes, slippers, and other footwear at no additional cost. Such rejection shall be limited to the period of 60 days from delivery to Buyer or to any of its customers, whichever receives the original delivery from Seller. Buyer may direct Seller to make shipments to any of Buyer's customers or to itself, and Seller agrees to make shipments in accordance with such instructions. Buyer shall have the right to inspect both finished articles and work in process on Seller's premises.

3. The price of each style of shoe, slipper, or other footwear to be sold by Seller to Buyer hereunder shall be agreed upon between them in writing before Seller enters upon production of said style for sale to Buyer. In the event of the failure of the parties hereto to agree upon such price within three days after request by either party the price shall be determined by arbitration under the rules of the American Arbitration Association then obtaining. Buyer shall furnish Seller technical advice and assistance and a reasonable allowance therefor shall be made in fixing prices. In the event that Buyer furnishes Seller the use of Buyer's machinery or equipment a reasonable allowance shall be made for the value of its use.

4. Buyer shall pay Seller for each shipment of shoes, slippers, or other footwear within 30 days after delivery, provided, however, that Buyer may set off the amount of any invoice against any amount owing Buyer by Seller.

5. It is specifically understood and agreed that Seller is acting hereunder as a vendor and that no relationship of principal and agent, master and servant, manufacturer and sub-manufacturer, jobber and contractor, partnership, or joint venture is intended or shall exist between the parties hereto.

6. This agreement shall not be assignable by Seller without Buyer's consent. Buyer may assign without Seller's consent only to an individual proprietorship, partnership, or corporation which

takes over the merchandising operations of Buyer as a going concern.

TRINA SHOE COMPANY,  
A Corporation;

By /s/ MAURICE FELLMAN,  
President.

CALIFORNIA FOOTWEAR  
COMPANY,  
A Co-Partnership;

By /s/ JACK LEWIS,  
Partner.

Received in evidence November 10, 1953.

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GENERAL COUNSEL'S EXHIBIT No. 5

Sublease

This agreement, made and entered into this 1st day of January, 1953, by and between California Footwear Company, a co-partnership, Lessor, and Trina Shoe Company, a corporation, Lessee, witnesseth:

1. Lessor lets to Lessee for the term of 5 years beginning January 1, 1953, the following described premises, the same being a portion of the premises which Lessor holds under a lease from Kate Salisbury. (See attachment.)

2. Lessee agrees to pay Lessor as rent for the demised premises for the term hereof the sum of \$17,400.00, payable in monthly instalments of

\$275.00 each on the first day of each month beginning January 1, 1953, for the first two years, and \$300.00 monthly thereafter.

3. Lessee agrees to use said demised premises only for the purpose of conducting footwear manufacturing operations, and agrees not to commit or suffer to be committed any violation of any zoning or other applicable laws, ordinances, or regulations in the use or maintenance of said demised premises. Lessee shall not commit or suffer to be committed any waste upon the demised premises, or any public or private nuisance, or other act or thing which may disturb the quiet enjoyment of any other occupant of the building in which the demised premises are located. Lessee shall not make, or suffer to be made, any alterations of the demised premises or any part thereof without the written consent of Lessor first had and obtained, and any additions to, or alterations of, the premises, except movable furniture and trade fixtures, shall belong to Lessor.

4. Lessee shall not use or permit said demised premises or any part thereof to be used for any purpose other than the aforesaid purpose for which said premises are hereby leased; and no use shall be made or permitted to be made of said premises, nor acts done, which will increase the existing rate of insurance upon the building in which said premises are located, or cause a cancellation of any insurance policy covering said building, or any part thereof, nor shall Lessee sell or permit to be kept, used, or sold, in or about said premises, any article

which may be prohibited by the standard form of fire insurance policies. Lessee shall, at its sole cost and expense, comply with any and all requirements, pertaining to said premises, of any insurance organization or company, necessary for the maintenance of reasonable fire and public liability insurance, covering said building.

5. Lessee shall, at its sole cost, keep and maintain said demised premises and every part thereof (except exterior walls and roofs, which Lessor agrees to repair), in good and sanitary order, condition, and repair, and replace broken glazing, hereby waiving all right to make repairs at the expense of Lessor as provided in Section 1942 of the Civil Code of the State of California, and all rights provided for by Section 1941 of said Civil Code. By entry hereunder, Lessee accepts the premises as being in good and sanitary order, condition, and repair and agrees on the last day of said term, or sooner termination of this lease, to render said demised premises unto Lessor in the same condition as received, reasonable use and wear thereof and damage by fire, Act of God, or by the elements excepted, and to remove all of Lessee's signs from said premises.

6. Lessee acknowledges that it is fully familiar with all of the terms and provisions of the underlying lease from Kate Salisbury to Lessor and agrees that Lessee will not commit or suffer to be committed any act or omission in relation to the premises demised to Lessee which would constitute



a breach of condition or covenant or give rise to a right of forfeiture jeopardizing Lessor's tenure under said underlying lease.

7. In addition to the rent hereinbefore reserved, Lessee shall pay before delinquency all charges for water, gas, heat, electricity, power, and all other services which may be used in or upon the demised premises during the term of this lease, except that where Lessee uses services in common with Lessor, which services are not separately assessed or metered, Lessee shall pay its proportionate share thereof, such share to be determined by mutual agreement within three (3) days after notice if possible, otherwise to be determined by arbitration under the rules of the American Arbitration Association then obtaining.

8. Lessee shall not vacate or abandon the premises at any time during the term; and if Lessee shall abandon, vacate, or surrender said premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the premises shall be deemed to be abandoned, at the option of Lessor, except such property as may be mortgaged to Lessor.

9. Lessee, as a material part of the consideration to be rendered to the Lessor under this lease, hereby waives all claims against Lessor for damages to goods, wares, and merchandise, in, upon, or about said premises, from any cause arising at any time, and Lessee shall hold Lessor exempt and

harmless for and on account of any damage or injury to any person, or to the goods, wares, and merchandise of any person, arising from the use of the premises by Lessee, or arising from the failure of Lessee to keep the premises in good condition and repair, as herein provided.

This lease is made upon the express condition that Lessor is to be free from all liability and claim for damages by reason of any injury to any person or persons, or any property of any kind whatsoever and to whomsoever belonging, including Lessee's, from any cause whatsoever while in, upon, or in any way connected with the said demised premises during the term of this lease or any extension hereof or any occupancy hereunder, Lessee hereby covenanting and agreeing to indemnify and save harmless Lessor from all liability, loss, cost, and obligations on account of or arising out of any such injuries or losses however occurring.

10. Lessee shall permit Lessor and its agents to enter into and upon said premises at all reasonable times for the purpose of inspecting the same, for the purpose of maintaining the building in which said premises are located, for the purpose of making repairs, alterations, or additions to any other portion of the building, or for the purpose of removing from said demised premises any personal property of Lessor. The reservation of the right of Lessor to enter said demised premises for the aforesaid purposes shall not imply any obligation on its

part to do so unless expressly so required by some other provision of this lease.

11. Lessee shall not assign this lease, or any interest therein, and shall not sublet the said premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents and servants of Lessee excepted) to occupy or use the said premises, or any portion thereof, without the written consent of Lessor first had and obtained, and a consent to one assignment, subletting, occupation or use by any other person shall not be deemed a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of Lessor, terminate this lease. This lease shall not, nor shall any interest therein, be assignable, as to the interest of Lessee, by operation of law, without the written consent of Lessor.

12. In the event of any breach of this lease by Lessee, then Lessor besides other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, Lessee. Should Lessor elect to re-enter, as herein provided or should it take possession pursuant to legal proceedings or pursuant to any notice provided by law, it may either terminate this lease or it may from time to time, without terminating this lease, relet

said premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Lessor in its sole discretion may deem advisable, with the right to make alterations and repairs to said premises. Rentals received by Lessor from such reletting shall be applied: first, to the payment of any indebtedness, other than rent, due hereunder by Lessee to Lessor; second, to the payment of rent due and unpaid hereunder; third, the payment of any cost of such reletting; fourth, to the payment of the cost of any alterations and repairs to the premises; and the residue, if any, shall be held by Lessor and applied in payment of future rent as the same may become due and payable hereunder or in payment of any other obligation of Lessee to Lessor. Should such rentals received from such reletting during any month be less than that agreed to be paid during that month by Lessee hereunder, then Lessee shall pay such deficiency to Lessor. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of said premises by Lessor shall be construed as an election on its part to terminate this lease unless a written notice of such termination be given to Lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Lessor may at any time thereafter elect to terminate this lease for such previous breach. Should Lessor at any time terminate this lease for any breach, in addition to any other remedy it may have, it may recover from Lessee all

damages Lessor may incur by reason of such breach, including the cost of recovering the premises, and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this lease for the remainder of the stated term over the then reasonable rental value of the premises for the remainder of the stated term.

13. In case suit is brought by Lessor to enforce any of the provisions of this lease or to recover rent or the possession of said premises, or in case Lessor is required to defend this lease in any action brought against Lessor, Lessee shall pay to Lessor a reasonable attorney's fee which shall be fixed by the court.

14. The waiver by Lessor of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same of any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this lease, other than the failure of the Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

15. Any holding over after the expiration of the said term, with the consent of Lessor, shall be con-



strued to be a tenancy from month to month, at a rental of \$300.00 a month, and shall otherwise be on the terms and conditions herein specified, so far as applicable.

In Witness Whereof, Lessor and Lessee have executed these presents, the day and year first above written.

CALIFORNIA FOOTWEAR  
COMPANY,

A Co-Partnership,

By /s/ JACK LEWIS,  
Partner (Lessor.)

TRINA SHOE COMPANY,  
A Corporation;

By /s/ MAURICE FELLMAN,  
President (Lessee.)

(Attachment to sublease of premises at 222  
South Main Street, Venice.)

The premises covered by this sublease consist of the business building located at 222 South Main Street, Venice, in the City of Los Angeles, County of Los Angeles, State of California, Excepting the front store room, the rear office room, and the front office room. Lessee shall have the joint use of the front office room with Lessor and shall have the right to use the pedestrian and vehicular entrances on Main Street for its business operations.

Received in evidence November 10, 1953.

GENERAL COUNSEL'S EXHIBIT No. 6

Promissory Note

Venice, California.

March 21st, 1953.

On Demand we promise to pay to the order of California Footwear Company at Union Bank & Trust Co., Los Angeles, California, for value received, the sum of Three Thousand Five Hundred Dollars (\$3,500.00) with interest at six per cent (6%) per annum from date until paid, interest payable annually. In the event of default of payment of principal or interest hereunder we promise to pay reasonable attorney fees to the holder of this promissory note.

TRINA SHOE COMPANY,  
A Corporation;

By /s/ MAURICE FELLMAN,  
Its President,

/s/ MAURICE FELLMAN.

This Promissory Note Is Secured  
by Chattel Mortgage

Received in evidence November 10, 1953.

## GENERAL COUNSEL'S EXHIBIT No. 7

This Instrument Is a  
Mortgage of Chattels

This mortgage, made the 21st day of March, 1953, by Trina Shoe Company, a California corporation, of the County of Orange, State of California, Mortgagor, to California Footwear Company, a co-partnership, Mortgagee,

Witnesseth:

That the Mortgagor to the Mortgagee all of the following personal property, situated at 222 Main Street, Venice, in the County of Los Angeles, State of California, and described as follows, viz.:

Office Equipment

- 1—Victor Adding Machine, #510060.
- 2—4 Dr. Steel File Cabinets.
- 3—Misc. Card File Cabinets.
- 1—Royal Typewriter, #Z1110.
- 1—Paymaster Check Protector. Desk, chairs, etc.  
Safe (Hall Safe Company).

Machinery & Equipment

- 1—Schwab Clicker, Serial #6689.
- 1—Reece Clicker, #717.
- 1—Western S.P. Model Strap Perforator #193.
- 1—Western S.P. Model Strap Perforator Stand &  
Motor #120.

- 1—Bostiche Stand and Motor #135.
- 1—Booth Lining Trimmer #33.
- 1—Schaefer Gluing Machine #1385.
- 1—United Cement Machine, Model C #1781.
- 1—Allied Cement Machine.
- 1—Brauner 2 Jack Sole Press.
- 1—Ingersoll-Rand Compressor  $\frac{1}{2}$  H.P.
- 1—Wilson Speed Print #4874.
- 1—Schwab Sole Ruffer #534.
- 1—Auto-Soler #39205.
- 1—W. J. Young Sole Splitter.
- 1—Press (Home made).
- 1—Heater.
- 5—Fluorescent Lights.  
Apex Channel Machine.

### Sewing Machines

- 1—Singer Stand, clutch and motor 112W115  
#W613781.
- 1—Singer Buckle Sewer 58-11—#7128731.
- 3—Singer 110W125 (W899711-W1032362-  
W852265).
- 1—Singer Head only Zig Zag—#32-1.
- 1—Singer Head only 31-20 N349543.
- 1—Singer H. Post 51W28.
- 1—Peerless Folder #603.
- 1—United Model 7 Sciver #9524.
- 2—Puritan Machines.

## Equipment

Tables, cutting tables, Miscellaneous Motors and small hand tools around shop.

## As Security For:

The repayment of Three Thousand Five Hundred Dollars (\$3,500.00) with interest thereon, according to the terms of a promissory note of even date herewith, executed by Mortgagor and Maurice Fellman, payable to the order of Mortgagee, and any and all renewals thereof, and any and all renewals of other indebtedness or obligations secured hereby, and

The repayment of any and all sums and amounts that may be advanced or expenditures that may be made by Mortgagee or the holder or owner of any indebtedness or obligation secured hereby, subsequent to the date of execution of this Mortgage for the maintenance or preservation of the mortgaged property or any part thereof, or that may be advanced or expended by the Mortgagee or the holder or owner of any indebtedness or obligation secured hereby pursuant to any of the provisions of this Mortgage subsequent to its execution, together with interest at 6% per annum on all such advances or expenditures, and

The repayment of any and all sums that may be advanced by Mortgagee or the holder or owner of any indebtedness or obligation secured hereby, and

The repayment of any and all indebtedness and obligations that may be incurred, subsequent to



the execution of this Mortgage, by Mortgagor to Mortgagee or to the holder or owner of any indebtedness or obligation secured hereby, together with interest thereon.

The maximum amount the repayment of which is secured by this Mortgage is Twenty-five Thousand Dollars (\$25,000.00), but the creation of debts in such amount or any part thereof is optional with the Mortgagee, and said maximum amount of Twenty-five Thousand Dollars (\$25,000.00) shall be considered only as the limit of the sums, expenditures, indebtedness, and obligations secured hereby at any one time, and shall not include such as may have existed and been repaid or discharged hereunder.

Mortgagor agrees to do and perform each of the following:

To do all acts which may be necessary to maintain, preserve and protect said mortgaged property; to keep said mortgaged property in good condition and repair; not to commit or permit any waste of said mortgaged property, nor to commit or permit any act with regard to said property in violation of law.

To pay, at least ten (10) days before delinquency, all taxes and assessments now or hereafter imposed on or affecting said mortgaged property, and to pay, when due, with interest thereon, all encumbrances, charges, or liens on said mortgaged property, or any part thereof, which appear to be prior or superior hereto.

To insure said mortgaged property and to keep all said property insured against fire and any other hazards designated by Mortgagee, which insurance protection shall be equal to the full insurable value of said property or to the amount of Mortgagor's unpaid indebtedness secured hereby, whichever is smaller. All policies of such insurance shall: (1) be in insurance carriers approved by Mortgagee, (2) at request of Mortgagee be delivered to it, and (3) provide that any loss thereunder be payable to Mortgagee. The amount collected under any fire or other insurance policy may be applied by Mortgagee upon any indebtedness or other obligations secured hereby or to the restoration of any or all of said mortgaged property in such manner as Mortgagee may determine, or at option of Mortgagee the entire amount so collected or any part thereof may be released to Mortgagor. Such application or use shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

To keep said mortgaged property separate and always capable of identification; not to sell, contract to sell, lease, encumber, dispose of or permit the consumption of all or any part of said mortgaged property, and not to remove all or any part of said mortgaged property from the premises on which it is now located or on which it may hereafter be located, without the written consent of Mortgagee, provided, however, that Mortgagee hereby consents to the use by Mortgagor of materials and supplies in the course of its manufacturing operations and

to the sale and delivery of finished footwear to its customers in the usual course of business, provided further, however, that the accounts receivable arising from such sales shall be assigned to Mortgagee.

To appear in and defend any and all actions or proceedings purporting to affect the security interest of Mortgagee in or title to all or any part of said mortgaged property, to pay all costs and expenses, including cost of evidence of title and attorneys' fees, in any such action or proceeding in which Mortgagee might appear, and Mortgagor hereby warrants that it is the sole owner and in possession of all said mortgaged property and that said mortgaged property is free and clear of all liens, encumbrances and adverse claims with the exception of the lien of this Chattel Mortgage.

To give to Mortgagee further security or to make payments on account to Mortgagee in the event there shall hereafter be a decrease in the value of said mortgaged property. Such further security or payments shall be in an amount or to the extent sufficient to offset said decrease in value.

Mortgagor further agrees that a failure on the part of Mortgagor to do or perform any of the foregoing shall constitute a default under this Chattel Mortgage.

Mortgagor further agrees:

1. If Mortgagor fails to make any payment or do any act as herein agreed, then Mortgagee, but without obligation so to do and without notice to

or demand upon Mortgagor, may make such payments and do such acts as Mortgagee may deem necessary to protect its security interest in said mortgaged property, Mortgagee being hereby authorized to take possession of said mortgaged property or any part thereof and to pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Mortgagee appears to be prior or superior to the lien of this Chattel Mortgage, and in exercising any such powers and authority to pay necessary expenses, employ counsel and pay them reasonable fees. Mortgagee's determination as to whether Mortgagor has failed to make any payment or do any act where herein required shall be final and conclusive. Mortgagor hereby agrees to repay immediately, and without demand, all sums so expended by Mortgagee pursuant to the provisions of this paragraph, with interest from date of expenditure at the rate of 6% per annum.

2. If Mortgagor shall default in the payment of any of the indebtedness, obligations, or liabilities secured hereby, including interest, or shall default in the performance of any other agreement herein contained, then Mortgagee at its option, without demand upon or notice to Mortgagor, may and it is hereby empowered to do the following:

(a) Declare all indebtedness, obligations and liabilities secured hereby to be immediately due and payable; or

(b) Proceed to foreclose this Mortgage according to law, and in any action of foreclosure (1)

there shall be due from Mortgagor to the plaintiff in such action, immediately upon the commencement thereof, an attorney's fee of One Hundred Fifty Dollars (\$150.00), and, if the action goes to judgment, a further attorney's fee equal to 10 per cent (10%) of the amount found due, which sums Mortgagor agrees to pay and which shall be included in the judgment in such action, and (2) plaintiff in such action shall be entitled to the appointment of a receiver, without notice, to take possession of all or any part of said mortgaged property and to exercise such powers as the Court shall confer upon him; or

(c) With or without foreclosure action, enter upon the premises where said mortgaged property or any part thereof may be and take possession thereof and remove or sell and dispose of said mortgaged property or any part thereof at public or private sale.

No power or remedy herein conferred upon the Mortgagee is exclusive of or shall prejudice any other power or remedy of the Mortgagee, and each such power and remedy may be exercised from time to time and as often as is necessary.

3. The sale described in Paragraph 2(c) of this Chattel Mortgage may be held by Mortgagee without any previous demand of performance or notice to Mortgagor of any such sale, and notice of sale, demand of performance, and all other notices and demands are hereby expressly waived by Mortgagor. Said mortgaged property, or any part thereof, may



be sold in one or more lots, and at one or more sales, which may be held on different days and which need not be held within view of the property being sold. Mortgagee may postpone the sale of all or any portion of said mortgaged property from time to time by public announcement at the time and place of sale if sold at public auction.

Mortgagee shall deduct and retain from the proceeds of such sale or sales all reasonable costs and expenses paid or incurred in the taking, removal and sale of said property, including any reasonable attorney's fees incurred or paid by Mortgagee; the balance of the proceeds shall be applied by Mortgagee upon the indebtedness, obligations, and liabilities secured hereby, in such order and manner as the Mortgagee may determine, and the surplus, if any, shall be paid to the Mortgagor or to the person or persons lawfully entitled to receive the same.

At any sale or sales made under this Mortgage or authorized herein, or at any sale or sales made upon foreclosure of this Mortgage, Mortgagee (or its representative) may bid for and purchase any property being sold, and, in the event of such purchase, shall hold such property thereafter discharged of all rights of redemption.

4. Mortgagor hereby assigns to Mortgagee all sums now or hereafter payable to Mortgagee as the proceeds of sale of said mortgaged property, or any part thereof, and any and all sums now or hereafter payable to Mortgagor under the terms of any

agreement for the sale or marketing of said mortgaged property, or any part thereof, to anyone other than Mortgagee; provided, however, that nothing in this paragraph contained shall be construed to waive or in any way affect the lien of this Mortgage or the limitations, hereinabove expressed, upon the Mortgagor's right to deal with said mortgaged property without Mortgagee's written consent.

5. By accepting payment of any sum secured hereby after its due date, Mortgagee does not waive or in any manner affect its right to require prompt payment when due of all other sums so secured and to declare a default for failure of Mortgagor so to pay. The waiver by Mortgagee of any default of Mortgagor under this Chattel Mortgage shall not be or be deemed to be a waiver of any other or similar default subsequently occurring.

6. If Mortgagee shall find that title to all or any of said mortgaged property is not as represented herein or if any change occurs in the title to all or any part of said mortgaged property without Mortgagee's written consent as herein provided, Mortgagee may, without any notice or demand at its discretion, from time to time, and without in any way impairing or releasing the obligations of Mortgagor hereunder do any of the following:

(a) Take, exchange, or release security for any of the obligations now or hereafter secured hereby;

(b) Extend the time for payment of said obligation;

(c) Otherwise change the terms of said obligations;

(d) Declare the whole of the balance of principal of said indebtedness secured hereby and the accrued interest to be due and payable immediately.

7. Mortgagee shall be entitled to enforce any indebtedness, obligation or liability secured hereby and to exercise all rights and powers hereby conferred, although some or all of the indebtedness, obligations and liabilities secured hereby are now or shall hereafter be otherwise secured. Mortgagee's acceptance of this Mortgage shall not affect or prejudice Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee.

8. The provisions of this Chattel Mortgage are hereby made applicable to and shall inure to the benefit of and bind all parties hereto and their heirs, legatees, devisees, administrators, executors, successors, and assigns (including a pledge of any indebtedness secured hereby.)

In Witness Whereof, Mortgagor has executed these presents the day and year first above written.

[Seal]

TRINA SHOE COMPANY,  
A Corporation;

By /s/ MAURICE FELLMAN,  
Its President.

Attest:

/s/ RUTH FELLMAN,  
Secretary.

State of California,  
County of Los Angeles—ss.

On March 21, 1953, before me, Ann Flinkman, a Notary Public in and for said County and State, personally appeared Maurice Fellman, known to me to be the President of Trina Shoe Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

[Seal]     /s/ ANN FLINKMAN,  
Notary Public in and for  
Said County and State.

My commission expires April 29, 1953.

Recorded at request of Richard A. Perkins  
March 25, 1953, Orange County, California.

Received in evidence November 10, 1953.

## GENERAL COUNSEL'S EXHIBIT No. 10

(Copy)

Milton S. Tyre

Lawyer

Milton S. Tyre

Richard J. Kamins

650 South Grand Avenue

Los Angeles 17

TRinity 2181

February 19, 1953.

California Footwear Company,  
253 South Los Angeles,  
Los Angeles, California.

Trina Shoe Company,  
222 Main Street,  
Venice, California.

Gentlemen:

I represent United Shoe Workers of America,  
Local 122.

The purpose of this letter is to confirm the statement of the Union's position heretofore made to you on several previous occasions.

It is the Union's position that the firm known as Trina Shoe Company in truth and in fact is actually California Footwear Company. It is the Union's position that the contract made between California Footwear Company and the Union last



year continues to be fully binding upon the firm known as Trina Shoe Company.

If you should take the position that Trina Shoe Company is not the same firm as California Footwear Company, in any event, it is a successor to California Footwear Company. Under the provisions of Section 2 of the contract between the Union and California Footwear Company the contract is binding upon its successor. Furthermore, until the successor has expressly agreed to be bound by the contract the liability of California Footwear Company continues.

This letter shall also serve as formal notice upon you that regardless of what position is taken by the Company as to the existence of a union contract, all of the employees engaged at the old job at 253 South Los Angeles, Los Angeles, California, request employment on jobs which they are capable of performing at the first time that the job becomes available. You may reach the employees involved either by notifying the Union or notifying the employee direct.

Very truly yours,

MILTON S. TYRE.

MST:BS

c.c. United Shoe Workers of America, Local 122.

[Stamped]: Received May 21, 1953.

Received in evidence November 10, 1953.

## GENERAL COUNSEL'S EXHIBIT No. 12

1953 Contract Between  
United Shoe Workers of  
America, Local 122, C.I.O.  
and  
California Footwear Company

September 27, 1952.

California Footwear Company,  
253 So. Los Angeles Street,  
Los Angeles 12, California.

Attention: Mr. Jack Lewis.

Gentlemen:

Any reference in the contract to the Southern California Shoe Manufacturers Association, Inc., is without any force or effect unless or until your Company becomes a member of said Association. If this is your understanding, kindly sign in the space hereinbelow provided.

Yours truly,

UNITED SHOE WORKERS OF AMERICA,  
LOCAL 122, C.I.O.,

By ERNEST TUTT,

Title: International  
Representative.

Approved and accepted:

CALIFORNIA FOOTWEAR  
COMPANY,

Name of Company.

By JACK LEWIS,

Title: Partner.

Los Angeles, California,

November 28, 1952.

California Footwear Company,  
253 South Los Angeles Street,  
Los Angeles 12, California.

Gentlemen:

This letter shall constitute an agreement between us, when executed by you in the space hereinbelow provided.

Pursuant to Section XIII, Paragraph 4, the Arbitration Panel shall consist of the following named arbitrators:

1. Benjamin Aaron.
2. Paul A. Dodd.
3. J. A. C. Grant.

Very truly yours,

UNITED SHOE WORKERS OF AMERICA,  
LOCAL 122, C.I.O.,

By /s/ ERNEST TUTT,

International Representative.

Accepted and agreed:

CALIFORNIA FOOTWEAR  
COMPANY,

By /s/ JACK LEWIS,  
Partner.

Agreement

This agreement is made this 27th day of September, 1952, by and between California Footwear Company, a co-partnership, hereinafter referred to as the "Employer," and United Shoe Workers of America, Local 122, C. I. O., hereinafter referred to as the "Union."

Section I.

Duration

This agreement shall be effective commencing October 1, 1952, and terminating at midnight on September 30, 1953, and shall automatically renew itself on October 1 of each year for an additional year unless and until either party gives notice in writing to the other of its desire to terminate or modify it at least 60 days prior to its regular termination. In such event, the parties shall meet and determine whether the current agreement shall remain in effect until the new agreement is made. Upon failure to reach an agreement upon the current contract, the agreement shall automatically expire at midnight of the 30th day of September of that year

### Section III.

#### Union Membership

1. The employer recognizes the Union as the sole and exclusive collective bargaining agency for all of its employees engaged in the production of shoes, but excluding executive, administrative, sales, professional, clerical, maintenance, truck driver, shipping and supervisory employees, with respect to rates of pay, wages, hours of employment, grievance for any and all individuals or group of individuals, and other conditions of employment.

2. When the employer has a job opening, he is required first to call the Union to see if there are any unemployed persons on the Union's list available for the job. The Union shall have 36 hours in which to furnish such employee or employees. Thereafter, the employer may hire the employee or employees in the open market. All employees shall apply for membership in the union no later than 30 days after their employment, and the Union agrees to accept such persons into membership upon payment of the requisite initiation fees and dues. The Union agrees to maintain a list of unemployed persons from both present and past employer members of Southern California Shoe Manufacturers Association, Inc., and the filling of new jobs shall be made from this list first in accordance with the seniority provisions of this agreement and thereafter, on the basis of the person longest laid



off being the first to be employed. The Union shall maintain another list of all other persons who wish to be placed thereon, which list shall be used after the first list has been exhausted. The Union agrees not to discriminate against any person because of his membership or non-membership in the Union in maintaining such lists.

3. All employees after thirty days from their employment shall be required as a condition of continued employment for the duration of this agreement to become and remain members of the Union in good standing. Upon written notice by the Union to the employer that any employee is not a member of the Union in good standing, the employer shall within five days discharge such employee. The Union shall attempt to replace such discharged employee immediately. Upon the Union's failure to do so, the employer may hire the replacement on the open market and the provision of Paragraph 2 hereof shall then apply.

4. New employees shall be considered on probation for a period of 2 weeks during which period they may be discharged at the discretion of the employer except for Union membership or activities, or race, creed, color, sex or political belief, and thereafter, no employee shall be discharged except for good cause.

5. Any foreman who spends  $\frac{1}{3}$  or more of his time on regular shoe production becomes subject to this agreement. No foreman shall be permitted to

work on regular shoe production (not including samples, etc., which is normally done by a foreman) either during or outside regular working hours, unless the production employees normally working on that operation are also working at that time.

6. Apprentices or inexperienced workers with less than 3 months' experience in the shoe industry shall secure work permits from the Union within two weeks of their hiring and shall become members of the Union after 30 days of employment.

7. In the event the national labor laws are amended or repealed so as to validate any paragraph of Section III of the 1947-1948 agreement such paragraphs from the 1947-1948 agreement shall be immediately placed into full force and effect in this agreement and the corresponding paragraphs of this agreement shall be deleted and without any force or effect; all of said provisions are subject to any law covering same.

\* \* \*

Received in evidence November 12, 1953.

## GENERAL COUNSEL'S EXHIBIT No. 13-A

Milton S. Tyre  
Lawyer

Milton S. Tyre  
Richard J. Kamins

650 South Grand Avenue  
Los Angeles 17  
TRinity 2181

July 14, 1953.

Trina Shoe Company,  
222 Main Street,  
Venice, California.

Gentlemen:

In the collective bargaining agreement now in effect between your company and United Shoe Workers of America, Local 122, C.I.O., or in any collective bargaining agreement that has been proposed by said Union with your company, I am authorized by said Union to advise you as follows:

The Union has not been for several years last past, is not now, and does not intend to be enforcing the following provisions of Section III: (a) In paragraph 2, that provision which requires that all employees apply for membership in the Union no later than 30 days after their employment; and (b) Paragraph 6.

You are further advised that the Union hereby proposes formally to change the fourth sentence of

Section III, paragraph 2, referred to in said paragraph (a) above as follows: "All employees shall apply for membership in the Union no later than 30 days from and after the effective date of this agreement, whichever is the later."

You are also advised that the Union hereby proposes formally to delete paragraph 6 of Section III referred to in (b) above.

Furthermore, you are advised that whether or not the Union's proposal is accepted, the Union will construe the contract so as to conform to the proposed changes.

Very truly yours,

MILTON S. TYRE.

MST:BS

Registered

R.R.R.

[Stamped] Received July 15, 1953.

Received in evidence November 12, 1953.

## GENERAL COUNSEL'S EXHIBIT No. 13-B

Milton S. Tyre

Lawyer

Milton S. Tyre

Richard J. Kamins

650 South Grand Avenue

Los Angeles 17

TRinity 2181

July 14, 1953.

California Footwear Co.,  
222 Main Street,  
Venice, California.

Gentlemen:

In the collective bargaining agreement now in effect between your company and United Shoe Workers of America, Local 122, C.I.O., or in any collective bargaining agreement that has been proposed by said Union with your company, I am authorized by said Union to advise you as follows:

The Union has not been for several years last past, is not now, and does not intend to be enforcing the following provisions of Section III: (a) In paragraph 2, that provision which requires that all employees apply for membership in the Union no later than 30 days after their employment; and (b) Paragraph 6.

You are further advised that the Union hereby proposes formally to change the fourth sentence of



Section III, paragraph 2, referred to in said paragraph (a) above as follows: "All employees shall apply for membership in the Union no later than 30 days from and after their first day of employment or from and after the effective date of this agreement, whichever is the later."

You are also advised that the Union hereby proposes formally to delete paragraph 6 of Section III referred to in (b) above.

Furthermore, you are advised that whether or not the Union's proposal is accepted, the Union will construe the contract so as to conform to the proposed changes.

Very truly yours,

MILTON S. TYRE.

MST:BS

Registered

R.R.R.

[Stamped] Received July 15, 1953.

Received in evidence November 12, 1953.

## GENERAL COUNSEL'S EXHIBIT No. 14

March 18, 1953.

United Shoe Workers of America,  
Local 122, C. I. O.,  
617 Venice Blvd.,  
Los Angeles 15, California.

Gentlemen:

Our Company agrees to recognize your Union as exclusive collective bargaining agent for all of our production employees effective immediately, providing you show us sufficient pledge and dues cards that you represent a majority of our production employees.

Yours very truly,

By /s/ MAURICE FELLMAN,  
Title: President.

.....,  
TRINA SHOE COMPANY.

Received in evidence November 12, 1953.

RESPONDENTS' EXHIBIT No. 14

Trina Shoe Co.  
Costa Mesa, California  
Beacon 6052

A Statement of Facts

In view of the fact that the United Shoe Workers Union has distributed leaflets headed by a statement bearing my signature, I feel that I must explain my connection with it.

Because of the many inaccuracies in the leaflet and the false inducements offered by the union, I do not want anyone to get the impression that my signature is in any way an endorsement of the union or their promises.

The facts are as follows: I was approached by the representatives of the union and presented with a contract which they asked me to sign. I took the position and signed a letter to the effect that I would not sign the employees to anything without their consent and demand.

Their efforts to sign a majority has led them to make extravagant promises and statements which are contrary to fact as follows.

Union scale does not offer \$1.00 minimum per hour as evidenced by section on wages taken from their contract and posted for your inspection. Wage increases are not intended by their contract as underlined in Paragraph 2C.

All Shoe Factories in Southern Calif. are not union. In fact, out of five factories making the same type and price shoe as ours only one is union.

These factories by name are:

L. A Shoe, Pasadena.....	Nonunion
EmBee, Los Angeles.....	Nonunion
Puritan Shoe Co, Los Angeles.....	Nonunion
Trina Shoe, Venice.....	Nonunion
Kay Shoe Co., Los Angeles.....	Union

Other benefits promised by the union you already have.

Namely:

- Paid Holidays
- Paid Vacation
- 4 Hours call in pay (State Law)
- Hospitalization
- Surgical Medical and Life Insurance

Note Also:

The union is offering you an application for \$1.00. This fee does not cover membership.

Our policy can be summed up as follows. We respect the right of any worker to seek employment without payment of fees or being subject to the prejudices of a union hiring hall.

Signed:

.....,  
 MAURICE FELLMAN,  
 Pres. Trina Shoe Co.

[At foot in longhand]: Any further questions, feel free to discuss with me.

Received in evidence November 24, 1953.

RESPONDENTS' EXHIBIT No. 18

March 19, 1953.

Milton S. Tyre, Esq.,  
650 South Grand Avenue,  
Los Angeles 17, California.

Dear Mr. Tyre:

Your letter of February 19th addressed to both California Footwear Company and Trina Shoe Company has been referred to me for reply on behalf of California Footwear Company. I regret the delay in answering.

The Union is incorrect in its position that Trina Shoe Company is the same as California Footwear Company. Trina Shoe Company is an independent enterprise which has been in existence upwards four years. It is in no sense a successor to California Footwear Company.

California Footwear Company ceased manufacturing operations some time ago and the Union had advanced notice of that fact. I am informed that when Trina Shoe Company commenced operations, it offered employment to those who worked at California Footwear Company, although, of course, there was no obligation on the part of Trina Shoe Company to do so.

California Footwear Company is confining its operations to merchandising and has ordered shoes from Trina Shoe Company.



I do not know whether Trina Shoe Company has responded to your letter and I am not authorized to answer for it, but I am informed that its answer would be the same.

Yours very truly,

RICHARD A. PERKINS.

RAP/hw

Received in evidence November 25, 1953.

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RESPONDENTS' EXHIBIT No. 19

National Labor Relations Board  
Twenty-First Region  
111 West 7th Street  
Los Angeles 14, California

December 4, 1953.

PRospect 4711, Ext. 881.

Richard A Perkins, Esquire,  
608 South Hill Street,  
Los Angeles, California.

Re: California Footwear Company and  
Trina Shoe Company  
Case No. 21-CA-1863

Dear Mr. Perkins:

You have already been served a copy of the charge in the above-entitled case, and a copy of our Motion to the Trial Examiner to reopen the hearing in Cases No. 21-CA-1659-1658.

In view of the fact that employee Jack Rosenthal turned down an unconditional company offer of reinstatement in May of 1953 (a fact undisputed in the record) it is the General Counsel's position that he thereby lost his right to reinstatement by reason of the alleged Section 8(a) (3) violation. Of course, said former employee, should he apply for employment in the future, is entitled to non-discriminatory consideration as a new applicant for employment.

We urge the companies, through you as their attorney, to immediately reinstate Eugene Piasek to the position of cutter, and invite you to participate with us in a case settlement conference at your earliest convenience. Pending such conference, and apart from it, we urge the immediate reinstatement of Eugene Piasek and, in that connection, we assure you that the General Counsel does not make, and at no time has made, any claim that cutter Jack Rosenthal is entitled to reinstatement (or back-pay after date of unconditional offer) by reason of the alleged Section 8(a) (3) discrimination.

Your early reply to this letter is earnestly solicited.

Very truly yours,

/s/ JEROME SMITH,  
Attorney.

Received in evidence January 6, 1954.

In the United States Court of Appeals  
for the Ninth Circuit

No. 15,169

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

JACK LEWIS AND JOE LEVITAN, a Copart-  
nership Doing Business as CALIFORNIA  
FOOTWEAR COMPANY,

and

TRINA SHOE COMPANY, a Corporation,

Respondents.

CERTIFICATE OF THE NATIONAL LABOR  
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—series 6, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a consolidated proceeding had before said Board, entitled, “Jack Lewis and Joe Levitan d/b/a California Footwear Company and United Shoe Workers of America, Local 122,” Case No. 21-CA-1659; “Trina Shoe Company and United Shoe Workers of America, Local 122,” Case No. 21-CA-1658; and “Jack Lewis and Joe Levitan

d/b/a California Footwear Company and Trina Shoe Company and United Shoe Workers of America, Local 122," Case No. 21-CA-1863.

Fully enumerated, said documents attached hereto are as follows:

1. Affidavit of service of Trial Examiner's order granting General Counsel's motion to strike the affirmative portion of the Respondents' answers mailed August 28, 1953, together with United States Post Office return receipts thereof. (Trial Examiner's Order is General Counsel's Exhibit 1-W and is contained in Volume III of the certified record.)

2. Stenographic transcript of testimony taken before Trial Examiner William E. Spencer on October 13, November 5, 10, 12, 13, 16, 17, 23, 24, and 25, 1953, together with all exhibits entered in evidence, together with rejected exhibits.

3. Affidavit of service of Trial Examiner's order granting General Counsel's motion to reopen the hearing to adduce evidence concerning the alleged discrimination against a certain person mailed December 8, 1953, together with United States Post Office return receipts thereof. (Trial Examiner's Order is General Counsel's Exhibit 22-G and is contained in Volume III of the certified record.)

4. Stenographic transcript of testimony taken before Trial Examiner James R. Hemingway on January 5, 6, and 14, 1954, together with all exhibits entered in evidence. (Annexed to item 2 herein.)

5. Trial Examiner Hemingway's order correcting transcript of testimony, dated April 4, 1954, together with affidavit of service and United States Post Office return receipts thereof.

6. Copy of Trial Examiner Hemingway's Intermediate Report and Recommended Order, dated April 28, 1954 (annexed to item 10 hereof); copy of order transferring cases to the Board, dated April 28, 1954, together with United States Post Office return receipts thereof).

7. Respondents' exceptions to Intermediate Report and Recommended Order received June 3, 1954.

8. General Counsel's exceptions to Intermediate Report and Recommended Order received June 4, 1954.

9. Stipulation, dated September 23, 1954, among the parties setting forth certain additional facts with respect to the sales by Respondent Trina Shoe Company to Respondent California Footwear Company, and made a part of the record herein. (See page 2, footnote 1 of Board's Decision and Order.)

10. Copy of Decision and Order issued by the National Labor Relations Board on October 31, 1955, with Intermediate Report and Recommended Order annexed, together with affidavit of service and United States Post Office return receipts thereof.

In testimony whereof, the Executive Secretary of the National Labor Relations Board, being there-



unto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 26th day of July, 1956.

/s/ FRANK M. KLEILER,  
Executive Secretary.

[Seal] NATIONAL LABOR  
RELATIONS BOARD.

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[Endorsed]: No. 15169. In the United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Jack Lewis and Joe Levitan, a Copartnership Doing Business as California Footwear Company, and Trina Shoe Company, a Corporation, Respondents. Transcript of Record. Petition for enforcement of an order of the National Labor Relations Board.

Filed July 31, 1956.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit  
No. 15169

NATIONAL LABOR RELATIONS BOARD,  
  
Petitioner,  
  
vs.

JACK LEWIS AND JOE LEVITAN, a Copart-  
nership Doing Business as CALIFORNIA  
FOOTWEAR COMPANY,

and

TRINA SHOE COMPANY, a Corporation,  
  
Respondents.

PETITION FOR ENFORCEMENT OF AN OR-  
DER OF THE NATIONAL LABOR RELA-  
TIONS BOARD

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondents, Jack Lewis and Joe Levitan, a copartnership doing business as California Footwear Company, (hereinafter called Respondent California), its partners, agents, successors and assigns, and Trina Shoe Company, a corporation, (hereinafter called Respondent Trina), its officers, agents, suc-

cessors, and assigns. The consolidated proceeding resulting in said order is known upon the records of the Board as "Jack Lewis and Joe Levitan d/b/a California Footwear Company and United Shoe Workers of America, Local 122," Case No. 21—CA—1659; "Trina Shoe Company and United Shoe Workers of America, Local 122," Case No. 21—CA—1658; and "Jack Lewis and Joe Levitan d/b/a California Footwear Company and Trina Shoe Company and United Shoe Workers of America, Local 122," Case No. 21—CA—1863.

In support of this petition the Board respectfully shows:

(1) Respondents, Jack Lewis and Joe Levitan, doing business as a copartnership under the firm name of California Footwear Company, and Trina Shoe Company, a California corporation, are both engaged in business in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on October 31, 1955, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent California, its partners, agents, successors and assigns, and Respondent Trina, its officers, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondents by sending copies thereof postpaid, bearing Gov-

ernment frank, by registered mail, to Respondents' Counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the consolidated proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing those sections of the Board's said Order which relate specifically to the Respondents herein, and requiring Respondent California, its partners, agents, successors, and assigns, and Respondent Trina, its officers, agents, successors, and assigns, to comply therewith.

/s/ MARCEL MALLET-PREVOST,  
Assistant General Counsel.

NATIONAL LABOR RELA-  
TIONS BOARD.

Dated at Washington, D. C., this 18th day of June, 1956.

[Title of Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCE-  
MENT OF AN ORDER OF THE NA-  
TIONAL LABOR RELATIONS BOARD  
AND PETITION TO SET ASIDE SAID  
ORDER

Answer to Petition for Enforcement

Answering the Petition of the National Labor Relations Board for enforcement of its order, respondents admit, deny, and allege as follows:

1. Respondents admit the allegations of Paragraph (1) of the Petition, except that they deny that respondent Joe Levitan is a member of the partnership known as California Footwear Company, and allege that said partnership now consists of respondents Jack Lewis and Albert Lewis.

2. Answering Paragraph (2) of said Petition, respondents admit that on October 31, 1955, the Board stated its Findings of Fact and Conclusions of Law and issued an order directed to respondents, their officers, partners, agents, successors, and assigns, and that on the same date the Board's decision and order was served upon respondents by sending copies thereof postpaid bearing Government frank, by registered mail, to respondents' counsel; otherwise, respondents deny each and every allegation of said Paragraph.

3. Respondents admit the allegations of Paragraph (3) of said Petition.



## Petition to Set Aside Order

Respondents respectfully petition the Court to set aside said order of the National Labor Relations Board, on the ground that said order and each and every portion thereof is unsupported by the evidence upon the whole record, arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, contrary to Constitutional Rights, power, privilege, and immunity, in excess of statutory jurisdiction, authority, and limitations, and without observance of procedure required by law.

Dated: July 6, 1956.

/s/ RICHARD A. PERKINS,  
Attorney for Respondents.

[Endorsed]: Filed July 10, 1956.

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[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED UPON  
BY RESPONDENTS

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

Come now respondents and pursuant to Rule 17(6) of the rules of this Court, file this statement of points on which they intend to rely in the above-entitled proceeding, and this cross-designation of parts of the record necessary for the consideration thereof:

I.

Statement of Points

1. In the particulars in which they are adverse

to respondents the Board's findings and order are not supported by substantial evidence on the record as a whole.

2. The Board's order is in excess of the Board's statutory authority and in contravention of constitutional guarantees in that it constitutes an attempt to enforce a labor contract in an administrative proceeding not conducted according to the course of the common law and without providing for trial by jury.

3. The Board's findings and order are arbitrary and capricious and constitute denial of due process of law, particularly in the following respects:

(a) The Board's General Counsel began by prosecuting respondents on the charge (among others) that they were practicing continuing discrimination against one Rosenthal by laying off Rosenthal, retaining one Piasek in employment, and refusing to reinstate Rosenthal. During the hearing, respondent Trina recalled Rosenthal in place of Piasek for the single job involved, informed the General Counsel thereof on November 23, 1953, and inquired whether the General Counsel whether he had any objection. The General Counsel refused to reply then or until December 4, 1953, at which time he first asserted that Piasek should have the job instead of Rosenthal. Yet the Board found that respondents committed discrimination by recalling Rosenthal rather than Piasek, without getting permission from the General Counsel.

(b) The Board found respondents guilty of unfair labor practice for failing to comply with a labor contract containing illegal compulsory union membership provisions. Yet the Board has found other employers guilty of unfair labor practice for entering into and enforcing illegal union security contract provisions and orderd them to cease giving effect to such contracts and to cease recognizing the labor organizations party to such contracts.

(c) As pointed out in the dissenting opinion of the Acting Chairman of the Board, the Board applied to respondents a different standard of liability in case of plant removal than it applied to a North Carolina employer.

Dated: September 3, 1956.

/s/ RICHARD A. PERKINS,  
Attorney for Respondents.

[Endorsed]: Filed September 4, 1956.

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[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED UPON  
BY THE BOARD

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, petitioner herein, and pursuant to Rule 17 (6) of the rules of this Court, files this statement of points

upon which it intends to rely in the above-entitled proceeding, and this designation of parts of the record necessary for the consideration thereof:

## I.

### Statement of Points

1. Substantial evidence on the record as a whole supports the Board's finding that respondents, by interrogating their employees with respect to their affiliations with and attitudes toward Local 122, United Shoe Workers of America, and by surveillance outside that union's meeting hall during a membership meeting, interfered with, restrained and coerced their employees' right of self organization in violation of Section 8 (a) (1) of the Act.

2. Substantial evidence on the record as a whole supports the Board's findings that respondents refused employee Roark a job at their plant in Venice, California, because of her union membership, and discharged employee Piasek because of his testimony against them in the hearing herein before the Board's trial examiner, in violation of Sections 8 (a) (3) and (4) of the Act, respectively.

3. Substantial evidence on the record as a whole supports the Board's finding that respondent California Footwear Co., controlled the business operations at the plant in Venice, California, nominally operated by respondent Trina Shoe Company, and that it falsely represented the contrary to Local 122, United Shoe Workers of America, for the pur-

pose of getting rid of that union and avoiding the collective bargaining contract which it had executed with that union.

4. The Board properly determined, in view of the finding stated in paragraph 3, above, that respondent violated Section 8 (a) (5) of the Act by refusing to discuss with Local 122, United Shoe Workers of America, the transfer of their employees to their plant in Venice, California, by unilaterally imposing new conditions of employment at the Venice plant and refusing to recognize the aforesaid union as the representative of the employees at the Venice plant, and by refusing to continue in effect the terms of the pre-existing contract with said union after operations began at the Venice plant.

5. The Board's order is valid and proper under the National Labor Relations Act, as amended.

/s/ MARCEL MALLET-PREVOST,  
Assistant General Counsel,  
NATIONAL LABOR RELATIONS BOARD.

Dated this 26th day of July, 1956.

[Endorsed]: Filed July 31, 1956.